

# Investing in the People's Business:

## A Business Proposal for Campaign Finance Reform

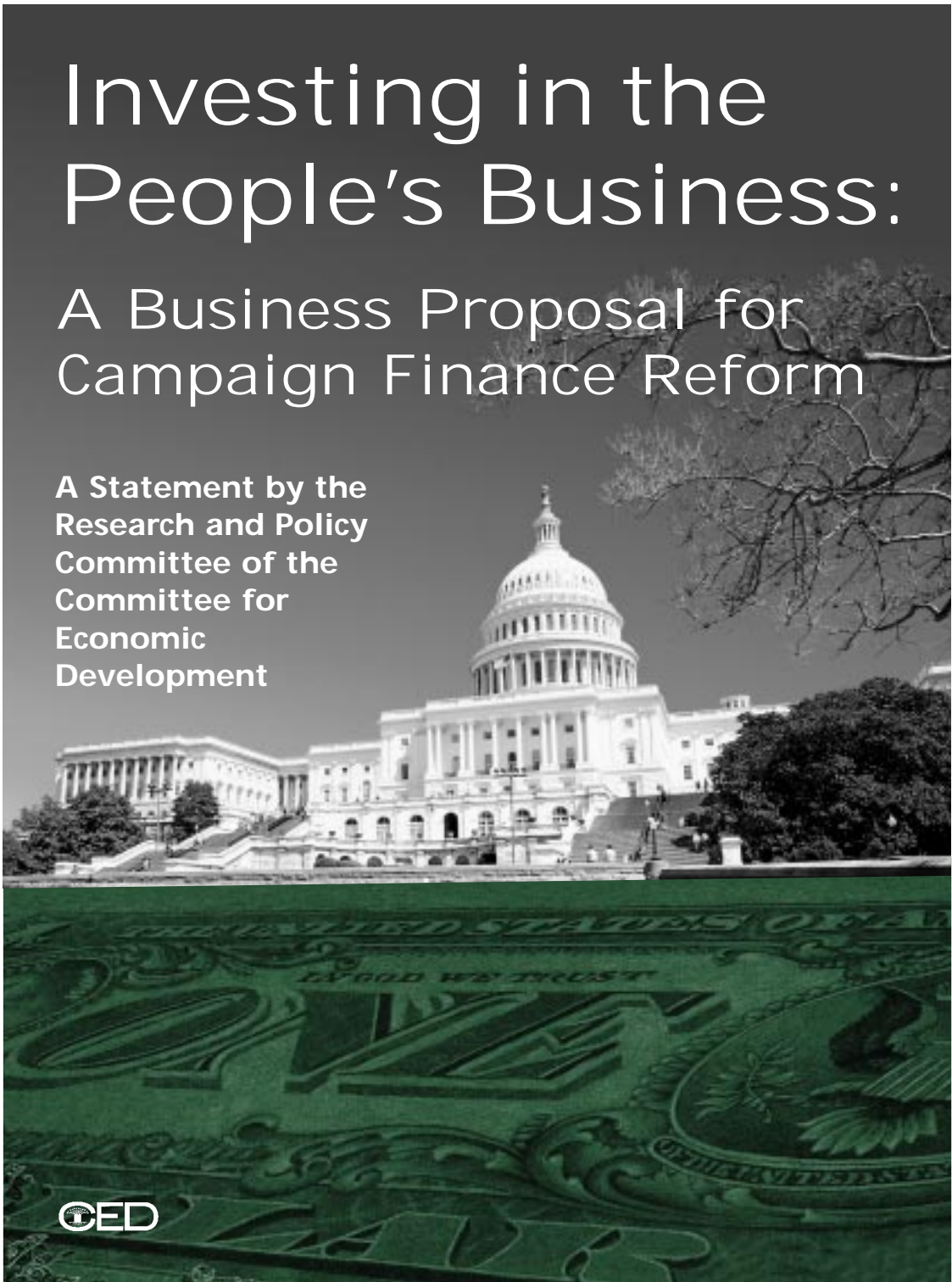
**A Statement by the  
Research and Policy  
Committee of the  
Committee for  
Economic  
Development**



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## RESPONSIBILITY FOR CED STATEMENTS ON NATIONAL POLICY

The Committee for Economic Development is an independent research and policy organization of some 250 business leaders and educators. CED is nonprofit, nonpartisan, and nonpolitical. Its purpose is to propose policies that bring about steady economic growth at high employment and reasonably stable prices, increased productivity and living standards, greater and more equal opportunity for every citizen, and an improved quality of life for all.

All CED policy recommendations must have the approval of trustees on the Research and Policy Committee. This committee is directed under the bylaws, which emphasize that "all research is to be thoroughly objective in character, and the approach in each instance is to be from the standpoint of the general welfare and not from that of any special political or economic group." The committee is aided by a Research Advisory Board of leading social scientists and by a small permanent professional staff.

The Research and Policy Committee does not attempt to pass judgment on any pending

specific legislative proposals; its purpose is to urge careful consideration of the objectives set forth in this statement and of the best means of accomplishing those objectives.

Each statement is preceded by extensive discussions, meetings, and exchange of memoranda. The research is undertaken by a subcommittee, assisted by advisors chosen for their competence in the field under study.

The full Research and Policy Committee participates in the drafting of recommendations. Likewise, the trustees on the drafting subcommittee vote to approve or disapprove a policy statement, and they share with the Research and Policy Committee the privilege of submitting individual comments for publication.

*Except for the members of the Research and Policy Committee and the responsible subcommittee, the recommendations presented herein are not necessarily endorsed by other trustees or by the advisors, contributors, staff members, or others associated with CED.*

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\*Voted to approve the policy statement but submitted memoranda of comment, reservation, or dissent. See page 43.

## Purpose of This Statement

Effective political campaigns have always been fueled by money as well as ideas. But in recent years, the cost of running for Congress or the Presidency has soared to record heights. For many candidates, raising money is no longer *one* important issue; it is the *only* issue.

For incumbents and challengers, the system has evolved (or devolved) into an eternal quest for campaign funds. Good people with limited resources are discouraged from seeking office. Broad popular participation in campaigns has been muscled aside by deep-pocket organizations and individuals. Vast sums of unregulated “soft” money have poured into political parties and issue-oriented advertising. Most important, disparities in campaign resources have reduced electoral competition. Over half the House races in 1998 were so one-sided as to not be truly competitive.

In this policy statement, the Trustees of CED make a strong case for sweeping reforms that will restore trust and balance to the campaign finance system, while protecting the first amendment rights of candidates and contributors. We call for a broad package of changes in federal election financing rules that we believe will improve competition, increase citizen participation, and staunch the flow of unregulated money.

Campaign finance reform does not rank high on most Americans’ lists of national problems. We think it should. We urge the American people — especially our colleagues in business — to take a more active role in supporting changes that will restore public confidence in the electoral process and encourage more Americans to actively participate in federal elections.

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## ACKNOWLEDGMENTS

This policy statement was developed by an outstanding group of business, academic, and political leaders (see page vi). We are very grateful for the time, effort, and care that each put into the development of this report. We also wish to cite CED’s previous policy statement *Financing a Better Election System* (1968). It tackled many of the same concerns addressed in this statement, including the need for greater transparency and increasing voter participation in the political process.

Special thanks go to subcommittee co-chairmen Edward A. Kangas, Global Chairman and Chief Executive of Deloitte Touche Tohmatsu, and Columbia University President George Rupp for their leadership and intelligence.

We are also indebted to nationally-known campaign finance expert Professor Anthony Corrado of Colby College, who served as project director, and to Van Doorn Ooms, CED’s Senior Vice President and Director of Research, for his important contributions.

We gratefully acknowledge The Pew Charitable Trusts for its generous support for this project and for CED’s ongoing work in this area.

Josh S. Weston, *Chairman*  
*CED Research and Policy Committee*  
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I.

# Introduction and Executive Summary

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The American public believes that our campaign finance system is broken. The vast majority of citizens feel that money threatens the basic fairness and integrity of our political system.<sup>1</sup> Two out of three Americans think that money has an “excessive influence” on elections and government policy.<sup>2</sup> Substantial majorities in poll after poll agree that “Congress is largely owned by the special interest groups,” or that special interests have “too much influence over elected officials.”<sup>3</sup> Fully two-thirds of the public think that “their own representative in Congress would listen to the views of outsiders who made large political contributions before a constituent’s views.”<sup>4</sup>

These findings, typical of the results of public opinion surveys conducted in recent years, indicate a deep cynicism regarding the role of money in politics. Many citizens have lost faith in the political process and doubt their ability as individuals to make a difference in our nation’s political life. Americans see rising campaign expenditures, highly publicized scandals and allegations regarding fundraising practices, and a dramatic growth in unregulated money flowing into elections. It is therefore not surprising that voter cynicism and disillusionment have increased along with campaign spending. One symptom of the public’s growing alienation is our declining level of voter turnout, which dropped to 36 percent in 1998, the lowest turnout in a midterm election since 1942.<sup>5</sup> In 1996, only 49 percent of voters went to the polls, a 70-year low for a presidential election.<sup>6</sup> Another symptom is the distressingly low level

of trust in government, notwithstanding some improvement in recent years.<sup>7</sup>

CED is deeply concerned about these negative public attitudes toward government and the role of money in the political process. These attitudes highlight the importance the public places on campaign funding in forming its opinions of government. They also indicate the detrimental effects of the changes that have taken place in the political finance system since the adoption of the 1974 Federal Election Campaign Act (FECA), which was passed in the wake of the Watergate scandal to resolve the problems of our campaign finance system.

As business leaders, we are also concerned about the effects of the campaign finance system on the economy and business. Americans identify “special interests” principally with corporations. A vibrant economy and well functioning business system will not remain viable in an environment of real or perceived corruption, which will corrode confidence in government and business. If public policy decisions are made—or appear to be made—on the basis of political contributions, not only will policy be suspect, but its uncertain and arbitrary character will make business planning less effective and the economy less productive. In addition, the pressures on businesses to contribute to campaigns because their competitors do so will increase. We wish to compete in the marketplace, not in the political arena.

Free and fair elections are an essential component of democratic government—and they cannot be conducted without money. Candi-

dates must have a reasonable opportunity to obtain the resources needed to wage effective campaigns. Well-funded campaigns strengthen electoral competition and can increase the information available to voters, which in turn can invigorate citizen participation in elections and government. A well-designed campaign finance system would encourage citizens to fulfill their public responsibility by participating actively in the process as candidates, donors, and voters.

Our present system often does not provide these benefits. Instead, the insatiable demand for election money raises concerns about the quality of political representation and the integrity of the political process. As campaign expenditures increase and larger sums are spent to win elective office, money becomes a barrier to entry into the political arena and provides undue advantage to those with access to large amounts of it. Because our system of private congressional campaign funding is based on the voluntary participation of individual citizens and organized groups, questions also arise about the interests that accompany campaign contributions. The solicitation and donation of private contributions can promote healthy interactions between politicians and their supporters. This process can inform government decision making and improve the responsiveness of the political system to constituents' interests. But it can also lead to improper relationships between donors and policymakers or produce perceptions of influence that fuel public disaffection.

We therefore believe we must reconsider the laws and regulations governing our system of political finance. We have conducted a dispassionate review of our current system and the major patterns of financial activity in recent elections. We have analyzed the many criticisms advanced against the current system and identified the major issues and objectives that we believe should serve as guidelines in the design of regulation. This report presents our analysis and conclusions and sets forth our recommendations for reform.

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## FINDINGS

We have identified four fundamental problems in the current system that challenge basic principles of democratic government:

**(1) Money and fundraising have become too important and demanding in our political life.** Rising campaign costs and the pressures on candidates to outspend their opponents have driven the campaign expenditures of the average House candidate over \$500,000, while the average Senate contender spends nearly \$3.8 million.<sup>8</sup> Candidates must spend enormous time and energy soliciting contributions, which detracts from the quality of representation they provide their constituents and the amount of time they have available to discuss their views with them.

**(2) The high cost of campaigns and the burdens of fundraising have reduced competition and the pool of qualified candidates in federal elections.** The financial demands of a typical federal race are pricing potential candidates out of the competition and discouraging some well qualified candidates from seeking office. Personal wealth is becoming a more important requirement for effective candidacy. Those who do decide to run against incumbents very often find it difficult to raise the sums needed to wage a viable campaign and, in almost every case, are outspent by substantial margins. Challengers, especially in House races, are increasingly underfunded, and the number of competitive races has declined. When competition is weak, voter choice is limited. Too many contests for our nation's highest offices fail to generate public participation or inspire citizens to vote.

**(3) The role of the small donor has declined.** Incumbents and challengers alike have sought to meet the financial demands of campaigns by concentrating on large gifts from their most generous supporters. In 1998, 61 percent of the money received by congressional candidates from individual donors was raised

in contributions of \$500 or more—a much higher proportion than the 38 percent only 14 years earlier. Incumbents have also emphasized political action committee (PAC) contributions, since these committees, especially those sponsored by corporate and trade associations, are primarily concerned with gaining access to legislators and rely on their contributions to obtain this access. The growth of PACs has led many voters to conclude that these committees and other organized interests have so much political influence that small contributions by individuals have little effect. Their disaffection has reduced participation in elections and weakened public faith in the legitimacy of election results.

**(4) Unregulated funds raised and spent in federal elections have increased dramatically.** We are especially troubled by the growth of party “soft money” financing and candidate-specific “issue” advertising. Instead of encouraging financial activity within the rules of FECA, the current system encourages financial activities beyond the law’s authority. Parties and organized groups, including committees sponsored by corporations and labor unions, have strong incentives to solicit and spend money in unregulated ways and to engage in transactions hidden from public disclosure.

In the 1996 election cycle, national party committees raised and spent over \$250 million in “soft money” exempt from federal contribution limits. In 1998 they raised \$201 million, a record for a midterm election; the Republicans raised 112 percent more than in 1994, and the Democrats 89 percent. The parties used this money for such activities as party-building, candidate-specific issue ads, and voter registration and turnout drives. Much of this money was raised through contributions of \$100,000 or more from individuals, PACs, corporations, and labor unions, often with the overt assistance of federal officeholders. In addition, millions of dollars were spent on candidate-specific issue ads by organized groups that did not report their financial activity, since

these ads are not subject to FECA. These unlimited funding devices give a relatively small group of donors great influence in the electoral process. They facilitate relationships between monied interests and candidates that increase the possibility of corruption and undermine the accountability and transparency that safeguard against it. And they threaten to place candidates and their campaign issues in the shadow of intervening interest groups, whose unregulated expenditures drive their own political agendas.

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## THE COMPLEXITY OF REFORM

These four problems are not easily solved. Regulating political behavior is always difficult, but especially so when financing innovations are changing the landscape. No one or two changes will achieve the diverse, and sometimes competing, objectives of a well-functioning system. We need a comprehensive reform program that honestly acknowledges competing values and provides the necessary trade-offs between them.

Successful reform must balance the need for regulation with the protection of First Amendment liberties. It must permit the funding needed for full and robust political debate and competition while limiting the undue influence of money. Reform must also pay due regard to the effects of specific changes on political parties and particular types of candidates or sources of funding.

We have considered a full range of reform proposals, from deregulation and simple disclosure to the leading proposals for public financing. We have carefully weighed the potential effects and consequences of each. Our deliberations have led us to recommend the following program of major changes. When taken as a whole, we believe this program can provide the balance needed to strengthen our democracy.\* \*\*

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\*See memorandum by HARRY L. FREEMAN (page 43).

\*\*See memorandum by NED REGAN (page 43).

## SUMMARY OF RECOMMENDATIONS

The four sets of recommendations that are summarized below are described in more detail in Chapter IV of this report.

### Recommendation #1:

#### ELIMINATE SOFT MONEY

As a general principle, funds used to promote political candidacies should be subject to the requirements and restrictions of federal campaign finance law. Soft money is the most egregious example of campaign financing that violates this principle. *No reform is more urgently needed than a ban on national party "soft money" financing.* Some business leaders have already moved in this direction by refusing to make soft money contributions. **We urge other members of the business community, labor unions, and individual citizens to follow this lead and voluntarily work to reduce the supply of soft money funds.**

CED also recommends that Congress prohibit national party committees and federal officeholders and candidates from raising or spending soft money. As a complementary measure, we urge state legislatures to pass any legislation needed to ensure that state party committees cannot finance their activities from unlimited or undisclosed sources of funding. This change will reduce the role of large individual contributors in the political process and prohibit parties from raising contributions from corporations or labor unions.

Party committees play a valuable role in the political process. They are important sources of funding for challengers and for efforts to improve voter participation. We realize that eliminating soft money will significantly reduce the resources available to party organizations. **To partially compensate for this loss, we recommend a change in the rules limiting individual contributions to federal candidates and political committees.** Under current law, individuals are limited to an annual total of \$25,000 for all contributions made to federal candi-

dates, PACs, and party committees. **We propose that Congress establish two separate aggregate limits for individuals. The first would limit the total amount contributed by an individual to federal candidates and PACs to \$25,000 annually. The second, separate ceiling would limit the total amount contributed by an individual to national party committees to \$25,000 annually.** This change will allow parties to raise more regulated money from individuals than is permissible under current federal law.

### Recommendation #2:

#### IMPROVE CANDIDATE ACCESS TO RESOURCES

Candidates should have the opportunity to raise the money they need to communicate effectively with voters and mount competitive campaigns without having to spend an inordinate amount of time and resources on fundraising. **We therefore recommend that Congress raise the limit on individual contributions to federal candidates from \$1,000 to \$3,000 per candidate per election and thereafter adjust this limit for inflation.** This increase will restore the purchasing power of a maximum individual contribution that has been lost since FECA was adopted 25 years ago. However, an individual's total contributions to federal candidates and PACs should remain subject to the annual limit of \$25,000 noted above.\* Only a small proportion of donors are able or willing to contribute at the maximum level, and this limit will help reduce the political influence of these wealthy donors.

We believe it is essential to enhance the role of small individual contributors in campaigns and to reduce the amount of time candidates have to spend raising money. **Therefore, we strongly recommend that Congress establish a voluntary program of public funding for congressional candidates. This program would provide eligible House and Senate candidates with**

\*See memorandum by WILLIAM F. HECHT, (page 44).



**two dollars in public money for every dollar received from an individual donor, up to a maximum of \$400 for each individual contribution of \$200.**

Candidates who choose to participate in this program would be required to abide by spending limits, as described below. Each participating candidate would also be required to limit any personal contribution to his or her own campaign to \$25,000. This reform will give candidates a strong incentive to solicit small individual contributions and small contributors an incentive to make them. It will significantly reduce the emphasis on fundraising in federal campaigns because, with this amount of matching funds, candidates will have an option of receiving a majority of their campaign money from small contributions and the matching public funds. Indeed, total individual contributions plus the matching funds would be sufficient to fully finance congressional campaign spending at current levels. Finally, this change will increase competition in federal elections by substantially increasing the resources available to challengers.

### **Recommendation #3: REDUCE THE FUNDRAISING “ARMS RACE” WITH CONGRESSIONAL SPENDING LIMITS**

Improving candidates’ access to resources will not reduce the demand for campaign funds or the amount of time candidates spend raising money if the additional funds simply feed a funding “arms race.” **It is therefore essential that Congress also enact a system of spending limits on House and Senate candidates who accept public funding, as we now do in presidential elections. These limits should be generous enough to induce candidates to accept public financing, but stringent enough to reduce the growth of campaign spending. Accordingly, we call for limits (detailed on page 38) higher than those proposed in recent reform bills presented to the Congress.** The application of such limits must be flexible enough to ensure

that candidates who agree to restrict spending are not materially disadvantaged if they face opponents who do not comply with the limits or if they are opposed by “independent” expenditures by the opposing party or outside groups.

We recognize that spending limits will not necessarily increase electoral competition, especially if candidates are unable to raise funds commensurate with those available to their opponents. **We therefore recommend that party committees be allowed to supplement a candidate’s resources and finance the difference between the amount he or she raises and the relevant spending limit. Spending limits would be adjusted for candidates facing opponents who have not agreed to limits.<sup>†</sup>**

The benefits of these recommendations can be realized only if these spending limits and other requirements are effectively monitored and enforced. We are concerned that the Federal Election Commission (FEC), the agency responsible for overseeing the law, is underfunded and understaffed. It currently lacks the resources needed to administer a program of congressional campaigns with public financing and expenditure limits. **We therefore urge Congress to review the staffing, structure, and current funding of the FEC and provide it with the resources and authority needed to ensure accurate and timely monitoring and compliance with the law.**

### **Recommendation #4: REFORM ISSUE ADVOCACY**

Greater regulation of candidate-specific issue advertising is needed to ensure a meaningful regulatory system. The current legal standard used to define “express advocacy” (the type of speech subject to regulation under fed-

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<sup>†</sup>This recommendation would allow party committees, in most instances, to provide greater assistance to federal candidates than that allowed under current law. We recognize that coordinated spending limits are presently being reviewed by the courts. In general, we support the principle of expanded party financing of elections, since it is a means of encouraging more fully funded and competitive elections.



eral campaign finance law) is too narrow. We prefer a broader standard that will make it harder to by-pass our federal election laws. We urge Congress to adopt a standard that sets forth clear criteria for identifying public communications that constitute express advocacy, to require that such communications be wholly financed from funds raised under federal contribution limits, and to require that the sources of funding and amounts spent on such communications be publicly disclosed. We suggest that express advocacy include communications that: (1) refer to, or feature the image or likeness of, a clearly identified federal candidate; (2) occur within 30 days of a primary election and are targeted at the state in which the primary is occurring, or within 60 days of a general election; and (3) would be understood by a reasonable person to be encouraging others to support or oppose that candidate.

If such a broader standard for determining express advocacy is not upheld by the courts, we believe that, at a minimum, prompt public disclosure of the financial activity associated with these communications should be required. We recommend requirements for full public disclosure of the sources of funding and amounts spent on such communication. Such disclosure will ensure that the public can know who is attempting to influence its voting decisions and will thus promote informed decision-making in the electoral process.

Table 1 compares the major features of CED's proposed reforms with the current system:

**TABLE 1**

### **Comparison of Major Features of CED Reform Proposal with Current System**

<b>SUBJECT</b>	<b>CURRENT SYSTEM</b>
<b>SOFT MONEY</b>	<ul style="list-style-type: none"> <li>• Allows soft money; allows national party committees to raise and spend unlimited amounts of money received from individuals, labor unions, corporations, and other donors.</li> <li>• Allows federal elected officials and candidates to raise soft money for national party committees.</li> </ul>
<b>INDIVIDUAL CONTRIBUTIONS</b>	<ul style="list-style-type: none"> <li>• Limits individual contributions to federal candidates to \$1,000 per candidate per election.</li> <li>• Limits the annual aggregate amount contributed by an individual to federal candidates, PACs, and party committees to \$25,000.</li> </ul>
<b>PUBLIC FUNDING</b>	<ul style="list-style-type: none"> <li>• No provision for public funding in congressional elections.</li> </ul>
<b>EXPENDITURE LIMITS</b>	<ul style="list-style-type: none"> <li>• No expenditure limits for congressional candidates.</li> </ul>
<b>PARTY EXPENDITURES</b>	<ul style="list-style-type: none"> <li>• Allows party committees to spend a limited amount in coordination with federal candidates.</li> </ul>
<b>ISSUE ADVOCACY</b>	<ul style="list-style-type: none"> <li>• Communications that do not expressly advocate the election or defeat of a federal candidate are not subject to the provisions of federal campaign finance law. There are no public disclosure requirements or restrictions on their sources of funding.</li> <li>• "Express advocacy" is defined narrowly, requiring the use of specific words in the text of a message indicating such advocacy.</li> </ul>

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## CED RECOMMENDATIONS

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- Eliminate soft money by prohibiting national party committees from soliciting, receiving, spending, directing or transferring any funds that are not subject to the restrictions of federal law.
  - Prohibit federal elected officials and candidates from raising funds for national party committees that are not subject to federal contribution limits.
  - Prohibit federal elected officials and candidates from sponsoring PACs that receive money not subject to federal contribution limits.
  - Encourage state legislatures to adopt legislation or regulations to ensure that state party committees cannot finance their activities with unlimited or undisclosed funds.
- 
- Limit individual contributions to federal candidates to \$3,000 per candidate per election, with adjustment for inflation.
  - Limit the annual aggregate amount contributed by an individual to federal candidates and PACs to \$25,000.
  - Establish a separate annual aggregate limit of \$25,000 for individual contributions to party committees.
- 
- Establish a voluntary program of public matching funds in congressional elections. Eligible candidates would receive \$2 in public funding for every \$1 raised from an individual contributor, up to a maximum of \$400 for an individual contribution of \$200. To be eligible, candidates must agree to limit personal contributions to their own campaigns and agree to spending limits.
- 
- Require congressional candidates who accept public funding to abide by spending limits. The ceilings would be set at \$500,000 per election in House races (with \$200,000 for a runoff election) and a base of \$1 million plus 50 cents times the voting-age population of a state in Senate races (with an additional 20 percent for a runoff election). These ceilings will be adjusted for inflation and for candidates facing opponents who have not agreed to limits.
- 
- Allow party committees to spend money in coordination with federal candidates up to the spending limit. That is, parties can make up any difference between a candidate's total spending and the amount of the spending ceiling.
- 
- Expand the definition of "express advocacy" communications to include public communications that are broadcast or distributed within a certain time period prior to an election and meet specific criteria. Communications that meet these criteria would be considered express advocacy and be subject to full public disclosure and limits on their sources of funding.
  - Should the courts not accept a broader definition of express advocacy, would require full public disclosure of the amounts spent and sources of funding for issue advocacy communications broadcast or distributed within a certain time period prior to an election.
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## II.

# Financing Federal Elections

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Money is essential to political campaigns. It is the means by which candidates acquire the goods, services, and skills needed to share their views with the electorate and mobilize public support. Without adequate funding, a candidate has little chance of becoming known to the electorate and waging a viable campaign. Money therefore plays a key role in determining the choices available to voters and the competitiveness of elections.

In recent decades, the role of money in election campaigns has become more prominent—and more controversial. The costs of seeking office have grown, as candidates have engaged in increasingly sophisticated methods of campaigning and turned more to broadcast advertising as their principal means of communicating with voters. These rising costs require candidates to spend increasing amounts of their time and resources fundraising.

CED believes that the increasing financial requirements of recent elections and the growing emphasis on fundraising raise serious questions about the health of our campaign finance system. Our main concern is that an increasingly burdensome system may be reducing electoral competition and discouraging qualified candidates from seeking office. We are also concerned that current financial practices may provide some candidates with an unfair competitive advantage and some donors with undue political influence.

In this chapter we explain these concerns by analyzing the growth of campaign spending, the sources of funding, and the financial

patterns of recent elections. We conclude that significant increases in the amounts spent on campaigns and changes in the sources of funding have created a need to make resources more easily available to candidates, especially those challenging established incumbents.

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### CAMPAIGN SPENDING

One of the central questions in the campaign finance debate is whether too much money is being spent on political campaigns. Many observers contend that election spending is too high and must be reduced. We thus begin by reviewing the amounts spent in recent elections and the major factors that have contributed to the rising expenditures.

During the 1996 election cycle, candidates, political committees, and other organizations and individuals spent over \$4 billion on political campaigns.<sup>9</sup> This spending covered not only the races for the White House and seats in Congress, but also contests for state and local offices, efforts by political parties and other organizations to register and turn out voters, costs incurred by party organizations at all levels of government, and the spending of numerous political committees sponsored by interest groups and other associations.

This \$4 billion was almost 25 percent larger than the amount spent in 1992. The 1996 election thus continued a long rise in campaign spending, which has increased more than twelve-fold in three decades, about three times the rate of general inflation.<sup>10</sup> This growth in

campaign spending has been led by the increasing sums spent on campaigns for federal office.<sup>11</sup>

In 1998, this rise in campaign expenditures abated slightly—unfortunately, for reasons that increase rather than diminish our concern. By year end, Congressional candidates reportedly spent \$644 million, slightly less than during the comparable period in 1995–1996. While spending in Senate races appears to have risen somewhat, to \$249 million, that by House candidates declined from over \$400 million in 1996 to \$395 million. This drop in House spending, however, reflects declining political competition, which we address below. There were fewer open seat races, which tend to be more competitive and expensive, and more uncompetitive challengers and correspondingly safe incumbents.

No single factor explains the growth in campaign expenditures. Changes in the size of electoral districts, innovations in campaign strategies, new technologies and polling techniques, shifting levels of competition, and the diverse behavior and tactics of political groups all contribute. However, much of the growth is the result of changes in the ways in which candidates communicate with voters. Candidates are making greater and greater use of broadcast media and direct mail appeals to share their views with ever larger electorates, and these broad-based types of communication raise the costs of campaigning.

The primary factor driving higher campaign spending has been the cost of television and other forms of paid broadcast advertising. The Television Bureau of Advertising estimates that all primary and general election candidates for federal, state, and local offices spent a total of \$50.8 million on television advertising in 1976. By 1996, candidate spending on television had reached \$400 million—an inflation-adjusted increase of more than 200 percent over the last five presidential election cycles.<sup>12</sup> However, these television advertising expenditures represent only about 10 percent of the total spent on all campaigns for elective office.

Most state and local candidates do not make extensive use of paid broadcast advertising, but television is important in most campaigns for federal office.

As might be expected, television advertising has had the greatest effect on spending in presidential races, where candidates must communicate with a national electorate. In 1996, for example, President Bill Clinton and Senator Robert Dole allocated 52 and 46 percent of their respective campaign funds to media advertising.<sup>13</sup> In the general election campaign, both candidates spent over 60 percent of their campaign funds in this manner.<sup>14</sup>

Broadcast advertising represents a smaller share of the budget in congressional campaigns but is still the major expense in most of these races, especially in the Senate. Major-party Senate and House candidates in 1992 spent 42 and 27 percent of their respective funds on electronic media advertising, including payments to media consultants, direct radio and television air time purchases, and advertising production costs. House candidates make less use of television and radio advertising because it is not a cost-effective means of campaigning in many districts, especially those in major metropolitan areas where media markets are much larger than a single House district. These candidates make greater use of more targeted communications, such as direct mail, and a significant proportion spend no money at all on broadcast advertising.<sup>15</sup>

Another major expense in most federal campaigns is the cost of raising funds. As expenditures have risen, candidates have had to devote larger sums to fundraising. The costs vary depending on the office being sought, the financial needs of a campaign, and the fundraising methods. In general, fundraising expenses represent 10-20 percent of the costs of campaigns, with the average higher for incumbents (who raise more money) than for challengers.<sup>16</sup> Rising expenditures on other campaign staples such as mailings and travel have also contributed to the growth in campaign spending. In addition, modern campaigns rely on an array

of consultants and sophisticated new technologies, including polling, computerized direct mail, and teleconferencing services, all of which have increased costs.

We do not consider increased spending on candidate communications *per se* to be a major cause for concern. Indeed, effective communications are an essential component of a meaningful campaign and are necessary to have an informed electorate. Thirty-second television spots may not be the best means of presenting voters with detailed information on a candidate's positions or public policy proposals, but these ads are the most accessible and cost-effective means available to candidates to communicate with large segments of the population.

Nevertheless, we are concerned about the burdens that rising expenditures place on individual candidates as they face the rising financial requirements of communicating with increasingly large electorates. Increased campaign spending is not simply a consequence of new technology, changing campaign practices, and higher costs of communication. Spending is also driven by candidate behavior. Most candidates fear being outspent by an opponent and worry about not spending enough on a campaign. Since no politician can know with certainty how much spending is "enough," or which campaign activities are most effective in garnering support, candidates tend to spend as much money as they can raise. This attitude contributes to an "arms race mentality" among candidates that, in turn, intensifies the pursuit of campaign dollars.

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## SOURCES OF FUNDING

Federal candidates are required by federal law to finance their campaigns by soliciting contributions from limited, publicly-disclosed sources. In addition, FECA sets limits on the amounts individuals, PACs, and parties may donate to candidates and prohibits corporations, national banks, labor unions, and for-

eign nationals<sup>17</sup> from making any contributions to federal campaigns. If a business or labor union wants to participate in the financing of a candidate's campaign, it must establish a PAC and make donations only from revenues raised through voluntary contributions received by the PAC. (The current contribution limits on individuals, PACs, and political party organizations in federal elections are shown in Table 2.)

In recent elections, most of the money in federal races has come from the voluntary contributions of individual citizens, who on average have provided about 50–60 percent of the monies received by candidates in House and Senate campaigns. PACs, the next largest source, provided an average 34 percent of the funding in House races and approximately 18 percent in the Senate. Party committees have provided about 5 and 9 percent of the money in House and Senate races respectively, while personal contributions by the candidates themselves have accounted for about 8 percent of financing in the House and 9 percent in the Senate. The sources of funding for House and Senate candidates in 1996 are shown in Figure 1 (see page 12).

In presidential races, the pattern is very different, largely due to the option of public funding. In presidential primary elections, most of the money raised by candidates comes from individual donors and the public funds generated by small individual donations. On average, more than 95 percent of the total funds received by recent presidential candidates has come from individuals and public funding, with individual donations providing about two-thirds of total receipts and public matching funds about one-third.

PACs play little role in the financing of presidential campaigns. Even candidates who specifically target PAC donations as a source of funding rarely receive more than 5 percent of their total funds from this source. Because PAC contributions are not eligible for public matching funds, candidates have less incentive



**TABLE 2****Federal Contribution Limits**

DONORS	RECIPIENTS				SPECIAL LIMITS
	Candidate (or candidate committee)	Political Action Committee (multi-candidate PAC <sup>1</sup> )	State or Local Political Party (party committee)	National Political Party (party committee)	
<b>INDIVIDUAL</b> (or partnership)	<b>\$1,000</b> per election <sup>2</sup>	<b>\$5,000</b> per calendar year	<b>\$5,000</b> per calendar year <sup>3</sup> (combined limit on contributions to all state and local parties)	<b>\$20,000</b> per calendar year <sup>3</sup>	<b>\$25,000</b> per calendar year (combined limit on contributions to all candidates, PACs, and parties)
<b>POLITICAL ACTION COMMITTEE</b> (multi-candidate PAC <sup>1</sup> )	<b>\$5,000</b> per election <sup>2</sup>	<b>\$5,000</b> per calendar year	<b>\$5,000</b> per calendar year <sup>3</sup> (combined limit on contributions to all state and local parties)	<b>\$15,000</b> per calendar year <sup>3</sup>	_____
<b>CORPORATIONS AND LABOR UNIONS</b>	prohibited	prohibited	<b>unlimited by federal law</b> provided money used for non- candidate-specific activities <sup>4</sup> (see also footnote 3 below)		_____
<b>STATE OR LOCAL POLITICAL PARTY</b> (party committee)	<b>\$5,000</b> per election (combined limit on contributions to all candidates)	<b>\$5,000</b> per calendar year (combined limit on contributions to all PACs)	<b>unlimited “transfers”</b> to other party committees		_____
<b>NATIONAL POLITICAL PARTY<sup>5</sup></b> (party committee)	<b>\$5,000</b> per election <sup>2</sup>	<b>\$5,000</b> per calendar year	<b>unlimited “transfers”</b> to other party committees		<b>\$17,500</b> to a U.S. Senate candidate per campaign

1. Most business, labor, and ideological/issue PACs are “multi-candidate” committees under federal law, which means they have been registered for at least six months, have at least 50 contributors, and have made contributions to at least five federal candidates. Non-multi-candidate committees are subject to the same contribution limits as individuals.

2. Each primary and general election counts as a separate election.

3. This limit only applies to money used to support or oppose federal candidates. There are no federal limits on money that individuals and PACs can give to political parties for non-candidate-specific “party building” activities such as issue development, voter registration, and get-out-the-vote drives. Money used for these non-federally-regulated purposes is called “soft money.”

4. Some states impose their own limits on contributions to state and local parties, regardless of how the money is used.

5. Includes U.S. Senate and House of Representatives campaign committees, as well as parties’ national committees, each of which may contribute \$5,000 to a candidate or PAC.

SOURCE: Center for Responsive Politics, *Money in Politics: Reform Principles, Problems and Proposals* (Washington, D.C. 1996).

to solicit these sources. In addition, most PACs choose to concentrate their resources on congressional campaigns, and some have a policy of not participating in presidential races.<sup>18</sup>

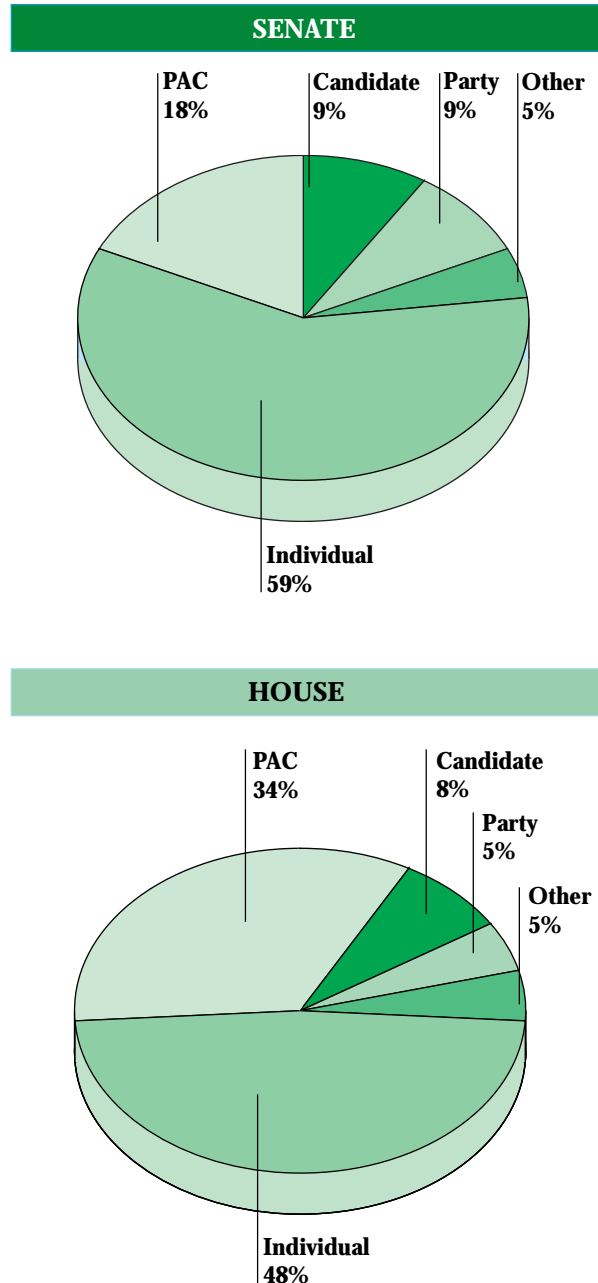
However, public subsidies, financed through a checkoff on federal individual income tax forms, have been an important source of funds in presidential campaigns. This system gives presidential aspirants a strong incentive to solicit small individual contributions of \$250 or less, since these are matched on a dollar-for-dollar basis with public funds. To qualify for the matching funds, a candidate need only raise \$5,000 per state in 20 states in small contributions and agree to observe aggregate and state legal spending limits. Candidates who participate in the program must also limit any personal contributions to their own campaigns to \$50,000.

Almost all those who have sought a major party's presidential nomination have accepted public financing. The only exceptions have been Republicans John Connally in 1980 and Malcolm "Steve" Forbes and Maurice Taylor in 1996; the two latter candidates financed their campaigns largely from their personal wealth. The availability of public funding has encouraged many candidates, especially lesser-known challengers, to pursue financial strategies that emphasize the solicitation of small gifts. This approach has allowed such candidates, including such diverse challengers as Republicans Ronald Reagan and Patrick Buchanan and Democrats Jesse Jackson and Jerry Brown, to raise 40 percent or more of their total revenues from public funds. Under the law, no candidate can receive more than half of the amount allowed by the spending limit in public monies.

In presidential general election contests, public funding has become the principal means of financing a campaign. Major-party candidates receive a full subsidy of the total amount of allowable spending. (The law also sets forth guidelines under which minor-party challengers or the nominee of a new party may qualify for a proportionate subsidy.) When the law was

**Figure 1**

### Sources of Congressional Campaign Funding, 1990–1996<sup>1</sup>



1. Average of the four elections, 1990–1996.

SOURCE: Ornstein, N., Mann, T., and Malbin, M., *Vital Statistics on Congress, 1997–1998* (Washington, D.C.: Congressional Quarterly, 1998).

adopted in 1974, this spending ceiling was set at \$20 million, with adjustments for inflation; by 1996 it had increased to \$61.8 million. To qualify for this subsidy, a candidate must abide by the spending limit and agree to raise and spend no additional private monies except for costs incurred to comply with the law.

Since the law's adoption, every major-party presidential candidate has accepted public financing in the general election. And, although H. Ross Perot financed his independent bid for the presidency in 1992 largely out of his own personal wealth, as the Reform Party nominee in 1996 he accepted the partial public subsidy for which he qualified by virtue of his share of the vote in 1992.

The overall pattern of the sources of campaign funding has not changed markedly over the past decade, as the relative shares of total receipts from individuals, PACs, public subsidies, and other sources have remained fairly stable. The most noteworthy change in recent election cycles has been the increase in the share of funds that has come from the candidates' own pockets. This change is best explained by exploring the general trends in political finance in more detail and in a broader context.

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## **TRENDS IN FINANCING AND THEIR EFFECTS ON THE POLITICAL SYSTEM**

Aspiring candidates now face the prospect of extremely costly campaigns. The average cost of races during 1976–1998 rose from approximately \$73,000 to over \$500,000 for the House and from \$596,000 to \$3.8 million for the Senate. In 1976, no House campaign cost more than \$500,000; in 1998, 309 did so. Million-dollar House campaigns, which numbered 22 as recently as 1988, nearly quintupled to 104 by 1998. In this last election, 15 of the candidates seeking election to the Senate spent at least \$5 million. In general, House and Senate candidates now must raise six or seven

times as much money as did their counterparts 20 years ago. The collision of these rising costs with fixed contribution limits has made the fundraising problem particularly acute.

The pressure to raise money is especially strong for members of the House, most of whom begin to seek contributions as soon as they are sworn into office. Some legislators have reported spending hours *every day* seeking contributions.<sup>19</sup> The time candidates have to devote to fundraising on average is not known, but one former senator has estimated that at campaign time he and his staff spent up to 80 percent of their time seeking contributions.<sup>20</sup>

## **Reducing the Quality of Governance and the Pool of Qualified Candidates**

This emphasis on fundraising undermines the quality of our governance. We recognize that fundraising can be a valuable part of a democratic political process. A candidate should spend time seeking the support of individuals and encouraging them to participate financially in a campaign. Indeed, an individual's willingness to make a contribution is an important expression of political support. But too many candidates now must spend too much time raising too much money. Incumbents then spend less time serving constituents, working on policy matters, engaging in legislative debate, or performing other official duties. Similarly, candidates seeking office have less time available to meet with voters, gain an understanding of voters' concerns, and develop views on the policy questions they may have to address if elected.

The burden of fundraising also affects the choices available to voters, since it discourages some individuals from continuing in office or from seeking office altogether. In recent years, a growing number of retiring senators and representatives have cited the demands of fundraising as one of the factors in their decision to leave office. They have noted that fundraising has become too arduous and demeaning, has taken too much time and energy

away from the work they were elected to do, and has diminished the quality of their representation.

Such pronouncements by experienced legislators highlight the difficulties that prospective candidates face in deciding whether to seek office. Incumbent legislators, with an established capacity for raising money, have a relatively easy time compared with those who consider challenging them. For many potential challengers, the prospect of attracting hundreds of thousands, if not millions, of dollars from thousands of contributors appears a daunting and perhaps impossible task.

CED is therefore deeply concerned that the burdens of fundraising may be limiting the pool of qualified candidates for public office. While many factors determine a candidacy, including the national political environment, the strength of a prospective opponent, and the potential for public disclosure of an individual's private life, the ability to raise money is now a central issue. Escalating campaign costs have become a stronger barrier to entry for those without access to money or to a broad base of donors, while personal wealth has become a more important qualification for effective candidacy. Even those with access to resources may choose not to run rather than endure the process. A campaign finance system should encourage individuals to compete for our nation's highest offices, not discourage them. It should increase, not diminish, potential candidacies. Our current system does not do so.

### **The Diminishing Role of the Small Contributor**

A central objective of FECA was to expand public participation in the financing of elections by encouraging candidates to solicit modest contributions from a broad base of donors. This goal acknowledged the beneficial value of small donors in a private system of campaign finance. Small contributions from many individual donors diminish the potential for corruption, since such contributions do not provide donors with excessive access to or influence

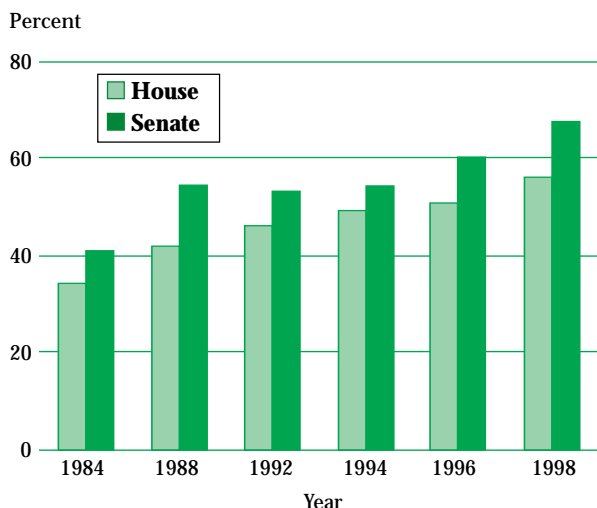
on legislators. The active involvement of small donors also can diminish the relative influence of large donors and organized interest groups by stimulating broad public participation in elections. This shift in relative influence would promote public confidence in the political process and encourage new donors to contribute. The result would be a dynamic system of political finance in which individuals see their own contributions, however small, as a meaningful and important form of political expression.

Our present system has not developed in this way. It has neither led candidates to emphasize small contributions nor encouraged small contributors to make them. While more individuals contribute to federal candidates than did so 20 years ago, there has been a clear trend towards larger individual gifts, especially in congressional campaigns.

This is hardly surprising. Candidates must raise money as efficiently as possible to cope with the rising financial demands of their campaigns. Since public matching funds are not available for small contributions to congressional races, Senate and House candidates can raise meaningful sums most efficiently by targeting large donations. Building a broad base of small donors is more time consuming and expensive, since it requires the use of extensive solicitation methods such as direct mail and telemarketing.

In recent elections, congressional candidates have increasingly relied on large individual contributions. (See Figure 2). In 1984, Senate candidates in all elections raised about 41 percent of their total individual contributions in donations of \$500 or more. By 1998, this figure had grown to 68 percent. The large-donor proportion for House candidates rose from 34 to 56 percent over the same period.

Large contributions have become important for both incumbents and challengers. In 1998, Senate incumbents raised almost 69 percent of their individual contributions in amounts of \$500 or more and challengers 67 percent. In House races, large gifts made up 56 percent of individual receipts for both incum-

**Figure 2****Contributions of \$500 or More as a Share of All Individual Contributions, 1984–1998\***

\*Contributions to candidates in special, primary and general elections.

SOURCE: FEC data. 1998 contributions data as available on February 15, 1999 in "cansum" files at <www.fec.gov>. These data cover different time periods for different campaigns. Comparable data for off-year campaigns prior to 1994 are not available.

bents and challengers. Conversely, the portion of candidate funding derived from small contributions of less than \$200 is declining. Although comparable data are not available for earlier elections, the change since 1992 is noteworthy. Senate candidates received 36 percent of their individual funding from such small donations in 1992, but by 1998 only about 23 percent. For House candidates the proportion declined similarly, from about 39 to 29 percent.<sup>21</sup>

Moreover, these data overstate the role of small contributors in congressional campaigns, since they are based on individual *contributions*, not the aggregate amount given by an individual *contributor*. We can safely assume that some of these donors made more than one contribution to a candidate and thus gave more than \$200. Similarly, some multiple donors cer-

tainly made contributions totaling more than \$500 that are not reflected in the large-contributions data.

**The Growing Influence and Concentration of Political Action Committees**

A more prominent change in the campaign finance system since the adoption of FECA has been the emergence of PACs as a major source of funding in congressional elections. In the two decades after FECA was adopted, the number of PACs grew from approximately 990 in 1976 to almost 4,600 in 1998. The greatest growth has come in the number of corporate PACs, which rose from 433 in 1976 to almost 1,800 in 1998, and in the number of PACs organized by ideological groups, known as "non-connected" PACs, which increased from about 100 to approximately 1,400. During the same period, the number of trade association PACs rose from 489 to 900, while PACs organized by labor unions grew from slightly more than 200 to 348.

While PACs are commonly cast in public discussions as single-interest organizations or "special interests," they collectively represent thousands of different interests and tens of thousands of individual contributors. All PAC monies contributed to candidates must come from voluntary donations; a committee can request, but not require, such donations from the members of a corporation or group with which it is associated. PACs thus provide small donors with a means of participating in the financing of campaigns through a broader group that represents their concerns. In this way, they have increased public participation in the financing of elections and offered individuals a valuable means of exercising their rights of free speech and political association.

Over the past two decades, the amount of money donated by PACs to House and Senate candidates has increased significantly, rising from about \$23 million in 1976 to about \$216 million in 1998. PACs have now become a major source of funding for federal candidates. Candidates have a strong incentive to pursue



this funding, since PACs may give five times as much as individuals to a federal campaign. Most PACs, however, give less than the maximum permissible contribution of \$5,000 per election to the candidates they support.

A substantial share of PAC funding is associated with corporations. In 1998, PACs related to publicly and privately held corporations donated \$76 million to federal candidates compared with \$61 million donated by trade association PACs, \$44 million by labor PACs, and \$28 million by non-connected PACs.<sup>22</sup> The average total contributed by the many corporate PACs was \$42,800, as compared with an average of approximately \$126,000 by labor PACs and \$20,000 by non-connected PACs.

These aggregate statistics, however, mask the great diversity in resources among PACs. In 1998, 55 percent of the more than 4,500 PACs active in the cycle made contributions totaling less than \$5,000, with 35 percent making no contributions at all. (See Table 3). In fact, less than four percent of all PACs made total contributions of more than \$250,000. This small group of 179 PACs was responsible for 56 percent of all federal PAC contributions in the 1998 cycle. This disproportionate role of a relatively small group of well-financed PACs is typical of recent experience.

PACs are pragmatic participants in the political process. Approximately 70 percent of their contributions goes to incumbents, while the remaining 30 percent is distributed among open seat candidates and challengers.<sup>23</sup> While PACs do not support only incumbents, and the PAC community is too diverse to be strictly categorized, their donations are a major source of the resource advantage held by incumbents.<sup>24</sup> In 1998, PACs gave incumbents in House races on average almost \$8 for every \$1 contributed to challengers; in Senate contests the ratio was over \$5 to \$1. Corporate and trade association PACs especially favor incumbents, in large part because they seek access to legislators who will decide issues that may affect their interests.

The growth in PACs has been a cause for alarm among many advocates of reform, lead-

**TABLE 3**

### **PACs Classified by the Size of Their Total Contributions, 1997–1998**

Amount of a PAC's Total Contributions (\$ thousands)	Number of PACs	Percent of All PACs	Total Contributions (\$ millions)	Percent of All PAC Spending
None	1,620	35.2	0.0	0.0
Less than 5	927	20.2	1.9	0.9
5-50	1,257	27.3	25.0	11.6
50-100	330	7.2	23.5	10.9
100-250	285	6.2	44.2	20.4
250-500	94	2.0	33.2	15.3
500-1,000	51	1.1	35.7	16.5
More than 1,000	34	0.7	52.6	24.3
Total	4,598	100	216.1	100

Percentages may not total 100% due to rounding.

SOURCE: Based on data through November 23, 1998 reported by the Federal Election Commission.

ing to charges that PAC donations are a major factor in determining legislators' votes and that PACs therefore exert undue influence in the political process. We have not found the direct influence of PACs on legislative voting to be as significant as many claim. The charges of "vote buying" by PACs are not well supported. Indeed, most studies that have examined the matter have found little relationship between PAC contributions and voting behavior, which is best explained by a legislator's ideology, party affiliation, and constituency interests.<sup>25</sup>

However, because a small proportion of PACs is responsible for most of the money donated to federal candidates, this concentration of financial influence does provide privileged access that raises serious questions about the role of PACs in the political process. Even if PAC contributions do not directly affect legislators' votes, they undoubtedly provide important influence. Indeed, committee or floor votes are but one indicator of the influence PACs may exert. Access can influence legisla-

tive decisions in a variety of ways that take place well before any committee or floor votes are taken. For example, a PAC may seek to ensure that a particular bill never makes it onto a subcommittee or committee agenda; it may be asked for its view on a particular bill or be granted an opportunity to testify at a committee hearing; or it may be allowed to help develop detailed and obscure legislative provisions designed to benefit a specific industry, business, group, or cause. Such influence is difficult to quantify, but it highlights our concern about the rise in PAC contributions and the disproportionate influence of the small group of PACs that contribute most of the money.

### **Diminished Competition: Underfunded Challengers**

Election results demonstrate the powers of congressional incumbency. Challengers face formidable obstacles and usually lose, especially in the House. Money, of course, plays a major role in these outcomes. Incumbents normally enjoy a very large advantage in campaign fundraising and are therefore capable, in most instances, of outspending their opponents by substantial margins.

However, money isn't everything. Even highly competitive challengers characteristically spend significantly less than their incumbent opponents. House challengers who earned at least 40 percent of the two-party vote in 1998 spent an average of \$639,000 on their campaigns, as compared with almost \$1 million for the incumbents they opposed. Of the nine challengers who beat House and Senate incumbents in 1998, seven spent less than their opponents. This is consistent with long historical experience. A survey of the 1,540 House races from 1976 to 1990 in which an incumbent faced a major party challenger in successive elections concluded that, while money is essential, challengers do not as a rule have to spend as much as incumbents to win.<sup>26</sup>

Thus, while incumbent spending clearly affects election outcomes, the most important

consideration is whether a challenger can raise enough money to finance a viable campaign. Money means more to a challenger than an incumbent because a challenger is less well-known. A challenger has a more pressing need to generate awareness of his or her candidacy among voters, to be seen as a viable candidate, and to communicate positions effectively.

Nevertheless, it is troubling that the resource disparity between incumbents and challengers has increased greatly in both absolute size and proportion in recent years. (Both are arguably important to the competitiveness of elections.) In 1976, the average House challenger spent about \$51,000, or 65 percent as much as the \$79,000 spent by the average incumbent. By 1998, the discrepancy had grown to roughly \$265,000 versus \$657,000, or 40 percent. (See Table 4, page 18.) In Senate races, the ratio of incumbent to challenger spending has not increased significantly, since Senate challengers tend to be higher-profile candidates who often have held elective office and have begun candidacies with more established financial support. However, the absolute advantage of Senate incumbents also has widened. In 1976, Senate incumbents spent on average \$172,000 more than challengers; by 1998, the gap had grown to \$1.6 million.

In this context, recent financing trends, especially in House elections, reveal an alarming problem—challengers who simply are not financially competitive. The majority of House challengers now raise and spend so little that they cannot wage a viable campaign. In 1998, just under half of the House challengers raised \$100,000, and only about one-third raised \$200,000. As a result, most House elections were financially uncompetitive. Average spending by Democratic challengers was \$270,000, compared with \$718,000 by their incumbent opponents; Republican challengers on average spent \$260,000, while their opponents spent \$588,000. In fact, 60 percent of House incumbents either had no significant opposition or outspent their opponents by a margin of 10-to-1 or more.<sup>27</sup> Figure 3 (page 19) shows the

relationship between campaign spending by individual challengers and their share of the two-party vote in the 1998 House elections. The relationship between spending and votes is not tight, of course, because of the many other factors that affect elections. Nevertheless, several points are clear from the graph. First, a very large proportion of the challengers spent less than \$200,000 and were simply uncompetitive, receiving less than 40 percent

of the two-party vote. Second, challengers with very little funding benefit greatly from additional resources, on average, but such gains diminish sharply as they pass a threshold in the range of \$200,000. Finally, to move well into the competitive range of 40 percent or more of the two-party vote, challengers typically need roughly \$300,000 or more in resources.<sup>28</sup>

### The Growing Reliance on Personal Wealth

In its *Buckley v. Valeo* decision in 1976, the Supreme Court ruled that candidates who are not receiving public subsidies may contribute as much money as they desire to their own campaigns. In recent elections, an increasing number of affluent candidates have taken advantage of this option to meet the fundraising requirements facing their campaigns.

As indicated by Figure 4, page 20, the amounts contributed by congressional candidates to their own general election campaigns have increased significantly, especially in the more costly Senate contests. Self-financing in Senate contests has risen from 5 percent in 1988 to 11 percent in 1998, and the total amount contributed has roughly tripled from about \$10 million to \$28 million.<sup>29</sup> In House races the share of self-funding has been more stable, but the amount contributed nevertheless has more than doubled over the same decade, from \$12.5 million to nearly \$26 million. This growth is not due simply to larger amounts spent by a few individuals. Many more candidates are now helping to finance their own campaigns. In all primary and general election campaigns in 1998, 18 Senate candidates and 69 House candidates put \$100,000 or more of their own money into their campaigns, either through direct contributions or loans.

Almost all self-contributions are made by challengers or individuals contesting open seats. In campaigns from 1988 to 1998, only 1.6 percent of the funds raised by congressional incumbents has come from their own funds—2.6 percent in the Senate and 1 percent in the House. In 1998, only one Senate and two House

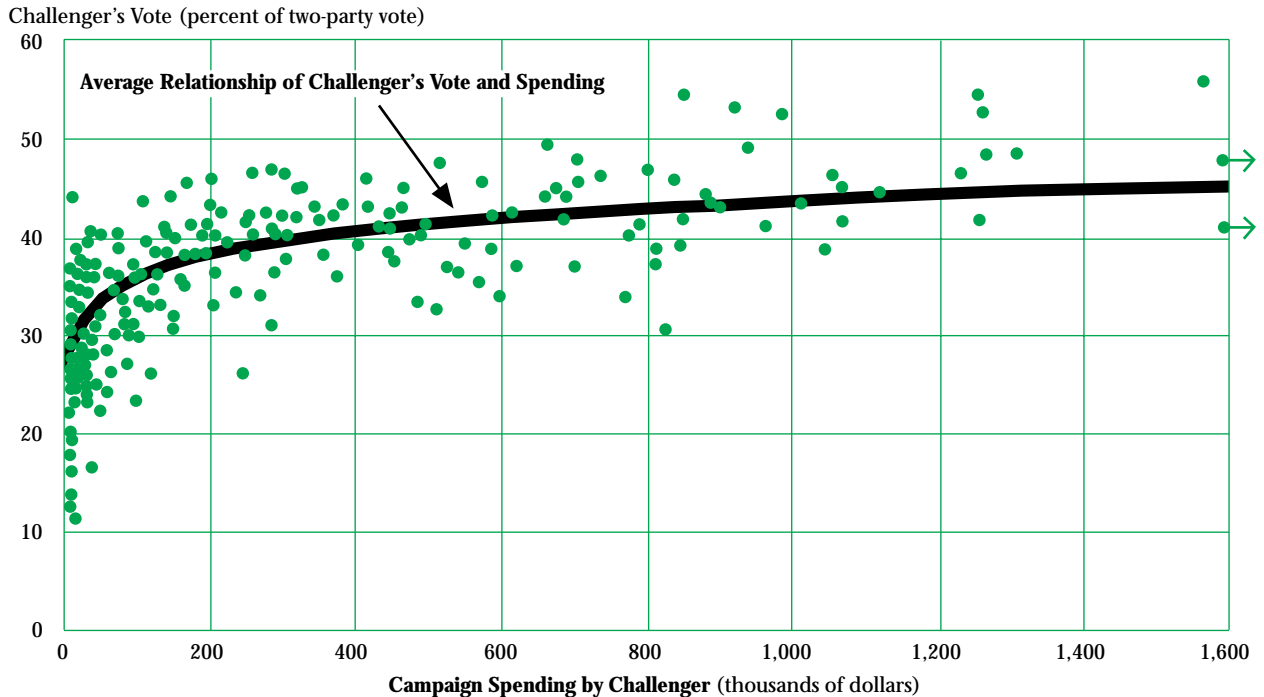
**TABLE 4**

#### Congressional Candidates: Average Expenditures, 1976–1998

HOUSE					
Thousands of Dollars					
Year	All Candidates	Incumbents	Challengers	Open Seats	Challenger/Incumbent (percent)
1976	73	79	51	125	65
1980	153	165	122	202	74
1984	241	279	162	362	58
1988	273	379	120	465	32
1992	408	595	167	436	28
1996	517	679	287	654	42
1998	512	657	265	777	40

SENATE					
Millions of Dollars					
Year	All Candidates	Incumbents	Challengers	Open Seats	Challenger/Incumbent (percent)
1976	0.6	0.6	0.5	0.8	72
1980	1.1	1.3	0.8	1.1	65
1984	2.3	2.5	1.2	5.0	49
1988	2.8	3.7	1.8	2.9	49
1992	2.9	3.9	1.8	2.9	47
1996	3.6	4.2	3.1	3.3	74
1998	3.8	4.7	3.1	2.7	66

SOURCE: Norman J. Ornstein, et al., *Vital Statistics on Congress, 1984-1985* (Washington, D.C.: American Enterprise Institute, 1984), pp. 65-66, 69-70, and *Vital Statistics on Congress, 1997-1998* (Washington, D.C.: Congressional Quarterly, 1998), pp. 81-83, 84-85. 1998 data are preliminary FEC data.

**Figure 3****Campaign Spending and Election Results: Major Party House Challengers, 1998\***

\*Includes all major party challengers with reported expenditures in 1998 House races.

SOURCE: FEC 1998 election data as available on February 15, 1999 at <www.fec.gov>. Most spending records cover the period through December 31, 1998.

incumbents gave \$100,000 or more to their campaigns. In contrast, personal funds accounted for 23 and 17 percent of the money raised by challengers and open-seat candidates in the Senate and House respectively in this last election.

Self-financed candidates have also become a feature of the presidential race. The best-known example is H. Ross Perot, who spent close to \$64 million from his personal wealth to finance his bid for the presidency in 1992; he spent an additional \$8.2 million in 1996 in support of his Reform Party, under whose banner he once again ran for president. Two other candidates also spent large sums of their own money seeking the 1996 Republican nomination. Malcolm "Steve" Forbes catapulted into the top tier of contenders on the strength of the \$37 million he spent on his campaign. Another contender, Maurice Taylor, president

of Titan Wheel International, spent \$6.5 million, but was less successful in launching his candidacy.<sup>30</sup>

Self-financing helps resolve the basic problem most challengers face—raising enough money quickly to mount a competitive campaign. A candidate who can afford to contribute or loan \$100,000 to \$250,000 or even more will have the "seed money" needed to launch a campaign and perhaps gain the credibility needed to be recognized as a serious candidate by political insiders and even members of the public at large. In addition, such candidates do not have to incur the substantial costs required to start a fundraising effort and therefore will have more money available to spend on other campaign activities. Finally, and most important, a candidate who relies exclusively or largely on personal funds is not constrained by FECA contribution and spending limits. The only

constraint is the amount of personal resources the candidate is willing to commit.

This financial advantage, of course, does not always translate into victory at the polls. Of the 87 Senate and House candidates who contributed \$100,000 or more to their election campaigns in 1998, only 11 were successful—providing further evidence that money alone does not win elections.

We believe that, while individuals should be free to use their own resources in campaigns, the growing role of personal wealth raises serious issues with respect to the future health of our federal electoral process. It diminishes the role of individual citizens and discourages broader public participation in campaign funding, since individual donors are less likely to consider a contribution meaningful when a candidate assumes primary financing responsibility. The increasing reliance on self-financing also makes personal wealth a more important qualification for seeking public office. National party leaders naturally seek

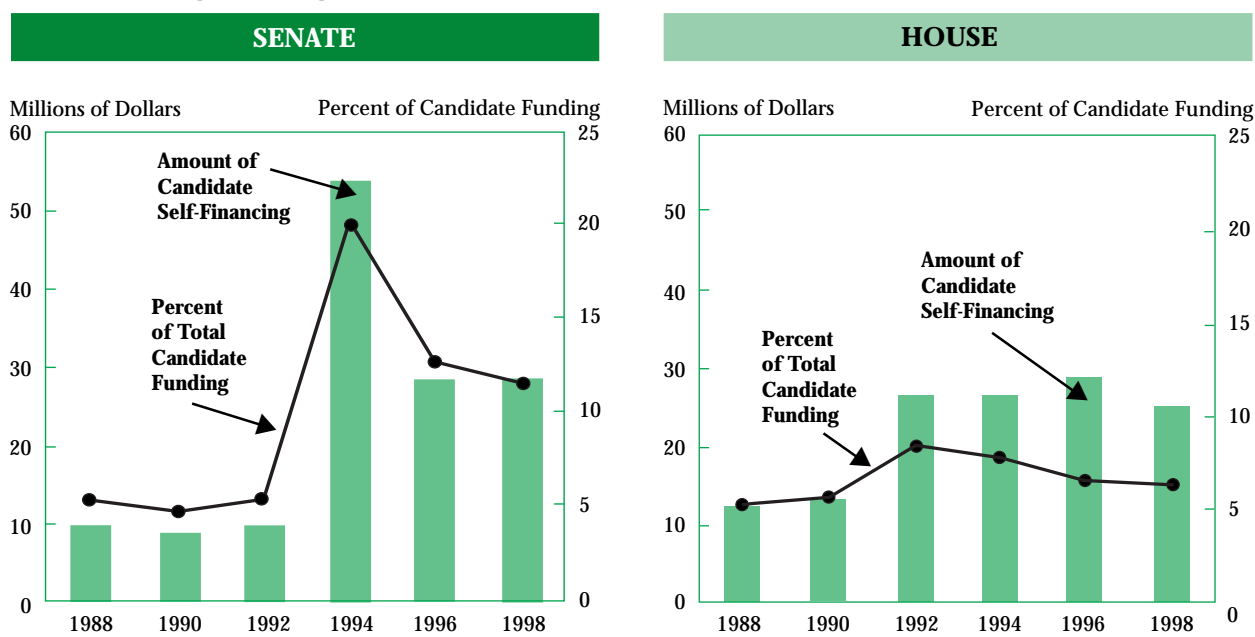
out wealthy candidates to run against better-known, better-financed incumbents. This trend further discourages less-affluent individuals from becoming candidates, since they would now face two major financial hurdles—a primary opponent with a substantial financial advantage and a well-financed incumbent. Indeed, the prospect of challengers with large personal resources may also discourage some incumbents from seeking reelection.

### Supporting Challengers: The Role of Political Parties

The other major source of campaign money that primarily benefits challengers is party money. In allocating their campaign resources, party organizations have one overriding goal: to maximize the number of seats their party holds in Congress. While it might be assumed that party leaders would favor incumbents in distributing their resources, the reality is just the opposite. Instead, party committees focus on candidates in close contests or marginal

**Figure 4**

### Self-Financing of Congressional Candidates, 1988–1998



SOURCE: Based on data reported by the FEC.



districts where party assistance might make a difference in the outcome. They also concentrate on challengers who can wage competitive campaigns against an entrenched incumbent of the opposite party.

Like other sources of campaign funding, party committees are limited in the amount of direct assistance they may provide to their candidates. But the law acknowledges the unique relationship between parties and their candidates by allowing party committees also to *spend money in coordination with* their candidates. This “coordinated spending” is also subject to FECA limits; the general ceiling is set at 2 cents times the voting-age population, adjusted for inflation. In 1996, national party committees were allowed to spend \$12.3 million on behalf of a presidential candidate; the 1998 congressional limits were \$32,550 for House candidates (\$65,100 in a single-district state) and from \$65,100 in the smallest states to \$1.5 million in California for Senate candidates.

While the Supreme Court in *Buckley* struck down most other limits on spending in federal elections, these party limits were not specifically challenged in that landmark case and have remained in effect. However, these restrictions are now being challenged in the case of *Colorado Republican Federal Campaign Committee v. Federal Election Commission*.<sup>31</sup> In June 1996, the Supreme Court ruled in this case that party committees may make unlimited *independent* expenditures in connection with federal elections, but it did not render an opinion on the constitutionality of the limits on *coordinated* expenditures. This constitutional challenge was remanded to the District Court, which struck down such limits in February, 1999. At this time it is uncertain whether this decision will be appealed by the FEC.

However, the limits on coordinated spending have significantly constrained the direct assistance parties can provide to candidates. The ceilings are so low that a party committee cannot legally pay the postage costs to send one letter to each eligible voter in a district or state. In fact, they are so low that a party com-

mittee could not even cover the costs of a letter mailed to each registered party supporter.

Despite these constraints, parties place great emphasis on assisting their candidates, especially those in the most competitive contests. Since 1990, the Democratic and Republican parties have each spent at least \$20 million to \$30 million per election cycle on coordinated expenditures. This represents a substantial increase from the levels of the early 1980s, when the Democrats typically spent \$3-5 million and the Republicans \$10-15 million. By contrast, the major parties spend only 1 to 2 percent of their federal funds on direct contributions to candidates, or an average recently of \$2-3.5 million per election.<sup>32</sup>

Most of the coordinated expenditures by both parties are made on behalf of non-incumbents. In 1996, the Democrats gave non-incumbents 85 percent of their total coordinated expenditures in Senate races and 80 percent in House races, with much of the largest share going to open-seat candidates. Almost all of the remaining money spent on behalf of incumbents went to those in jeopardy of losing their seats. The Republicans’ coordinated spending also favored non-incumbents, although more was spent defending incumbents because of the unusually large number of incumbents involved in close races. (Most of the large freshman class in the House won in 1994 with 55 percent of the vote or less.) Even so, the Senate and House Republican committees each disbursed close to two-thirds of their coordinated funds to assist non-incumbents. These 1996 allocations are similar to the patterns that characterized previous cycles.<sup>33</sup>

Because party committees direct their coordinated expenditures to help the maximum number of candidates win election, party funding helps to make elections more competitive. It enhances the ability of non-incumbents to increase their name recognition and make their views known to the electorate. In this way, parties improve the choices available to the electorate and enhance the competitiveness of the electoral process.

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### III.

## Recent Innovations in Political Finance: Soft Money and Issue Advocacy

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Efforts to regulate the flow of campaign money often produce unintended and unforeseen consequences. Candidates and their staffs, as well as party committees and interest groups, have responded to regulation with imaginative innovations, producing new financial practices unanticipated by lawmakers. The law has also been interpreted by the courts and administrative agencies in unexpected ways, producing new directives that also have encouraged new financial strategies. Both these developments have dramatically increased the flow of money in federal elections and significantly undermined the effectiveness of our federal campaign finance laws.

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### SOFT MONEY

Faced with rising campaign costs and an increased demand for money, yet constrained by contribution limits and, in some cases, spending limits, politicians and organized groups have sought additional ways outside the scope of FECA to finance political activity. Party committees, in particular, have pursued new methods of assisting candidates.

The most controversial of these activities has been the development of “non-federal” funding, or “soft money” — funds raised by national party committees to finance party-building activities and other expenditures. These committees rely in large part on the

access they can provide to federal officials, or on the more direct influence of federal office-holders and candidates, to solicit the large sums from corporations, labor unions, and other donors that provide most of their soft money. They then distribute a share of these monies to state party committees, who usually spend these funds in accordance with national party directives. Soft money fundraising is therefore primarily a “top-down” system, with the national party organizations playing the central role.

Because these funds are not supposed to be used for activities related to federal elections, they are not subject to the contribution and expenditure limits imposed on parties by FECA. National party committees may thus raise and spend unlimited amounts of soft money. They may also solicit unlimited soft money contributions from sources that are banned from making contributions in federal elections, especially corporations and labor unions.

### The Origins of Soft Money

Soft money was not recognized as a form of party finance under the original provisions of FECA. In fact, FECA contained only one narrow exception to the party contribution limits. Parties could receive contributions in unlimited amounts from unlimited sources for “building funds” established to pay for new buildings or headquarters structures. Outside of this “bricks and mortar” provision, all monies received by parties were subject to federal limits.

By 1980, the year of the second presidential election conducted under FECA, these tough prohibitions on party receipts and expenditures had begun to erode, and the door had been opened to unregulated party financial activity. This occurred as a result of problems experienced in the 1976 election and administrative decisions of the Federal Election Commission (FEC) that altered the kinds of money parties could raise.<sup>34</sup>

In the 1976 election, party leaders quickly recognized that the activities they traditionally financed in conjunction with national elections were significantly hindered by the new system of public financing and spending limits for presidential campaigns. Under the new law, expenditures by a party to help the presidential ticket might be considered in-kind contributions to the candidate or election-related expenditures that were no longer allowed. Parties therefore looked to the presidential campaigns to fund much of the paraphernalia used in traditional volunteer activities, such as signs, bumper stickers, and buttons, as well as voter registration and turnout activities. But the presidential campaigns, now faced with limited funds and wanting to maximize the resources available for television advertising, did not allocate substantial amounts to these other activities that parties considered important. As a result, party leaders appealed to Congress after the election to change the law so that they could finance volunteer and party-building activities without risking a violation of the law.

Congress responded to these concerns and in 1979 amended FECA to exempt very specific, narrowly defined party activities from the definitions of “expenditure” and “contribution” contained in the Act. Thus, parties were allowed to spend unlimited amounts on grassroots, party-building activities and generic party activities such as voter registration and turnout drives. They were also permitted to spend unlimited amounts on such traditional campaign materials as bumper stickers, buttons, and slate cards. But the Congress did not change the

rules on party fundraising: the monies spent on these activities had to come from “hard money” donations subject to federal contribution limits. Congress also specified that none of these unlimited expenditures could pay for mass public communications, such as direct mail or television advertising.

At the same time that Congress was making these changes in the law, party officials were asking the FEC to decide another set of issues related to general party activities. The parties argued that their organizations were involved not only in federal but also in non-federal election activity, such as supporting candidates in state-level races and building party support at the state and local level. Furthermore, many generic party activities, such as voter registration and turnout drives, are conducted to help both federal and non-federal candidates. The parties therefore contended that the finance rules should recognize the non-federal role of party organizations and allow parties to partially finance their political activity with monies subject only to state laws.

The FEC responded to these questions with a series of rulings that recognized the non-federal role of state and national party organizations. These rulings allowed parties to finance a share of their activities with money raised under state law if they maintained separate accounts for federal and non-federal funds. Subsequent rules established complex allocation formulas that determined the shares of particular expenditures that had to be allocated to federal and non-federal accounts.

Thus was born the distinction between “hard” and “soft” money. Hard (federal) money is subject to federal contribution limits and is the only type of funding that can be used to support federal candidates directly. All contributions to federal candidates, coordinated expenditures, or independent expenditures made in federal contests must use hard money. Soft (non-federal) money is exempt from federal limits and can be used to finance general party activities, including such activities as voter reg-

istration drives, even though these activities may indirectly influence federal elections, for example, by encouraging more party members to vote.

The FEC's decisions essentially freed parties to engage in unlimited fundraising as long as they abided by the technical requirements of the law. They could now raise (and spend) monies obtained from sources that were banned from participating in federal elections or from individuals and PACs that had already donated the legal maximum. These changes in the rules thus gave parties a strong incentive to raise soft money.

### The Growth of Soft Money

Parties quickly adapted to the new regulatory environment. At first, soft money was primarily raised in presidential election years for use on voter registration and turnout operations. But the parties soon expanded the role of soft money by expanding the range of activities that could be paid for with these funds. They also began to raise soft money more aggressively, soliciting ever larger sums.

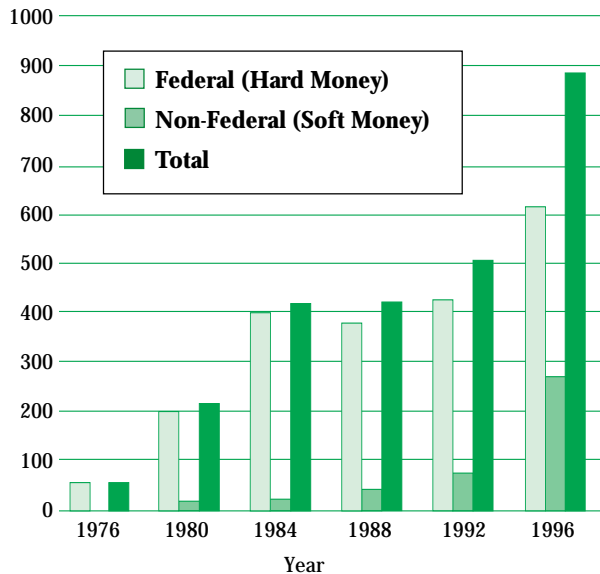
Since 1980, soft money has grown rapidly. In 1980, the Republican and Democratic national party committees spent a total of about \$19 million in soft money, with the Republicans disbursing \$15 million and the Democrats \$4 million. Much the same pattern existed in 1984. By 1988, however, the amount of soft money had more than doubled to \$45 million, shared about equally between the two major parties. By 1992, soft money had almost doubled again to \$80 million, with the Republicans spending \$47 million to the Democrats' \$33 million.<sup>35</sup>

Yet the soft money raised in those elections pales in comparison to that raised in 1996 and 1998. In the Presidential election cycle of 1996 the two major parties raised \$262 million in soft money, more than three times the amount garnered only four years earlier. (See Figure 5.) The Republican committees solicited more than \$138 million and the Democratic com-

**Figure 5**

### Political Party Spending, 1976–1996

Millions of Dollars



SOURCE: Data for 1976 through 1988 based on Herbert E. Alexander, "Financing the 1976 Election" (Washington, D.C.: Congressional Quarterly, 1979), p.190, and Anthony Corrado, "Paying for Presidents" (New York: Twentieth Century Fund, 1993), p. 67. Other data based on reports filed with the Federal Election Commission.

mittees \$124 million. In contrast, hard money increased much more slowly. Democratic hard money increased by 59 percent over 1992, and Republican funds by 71 percent.

Similarly, soft money fundraising in 1998 was up dramatically over the previous off-year election cycle of 1994. As of 20 days after the election, the national party committees had raised \$201 million in soft money, close to twice the \$107 million they had raised in the entire 1994 election cycle. The Republicans had raised \$111.3 million, compared with \$52.5 million in 1994, an increase of 112 percent; the Democrats had raised \$89.4 million, 82 percent more than the \$49.1 million four years earlier.<sup>36</sup>

The share of total party funds represented by soft money has also increased substantially. In 1992, for example, soft money constituted 26 percent of the receipts of all three Democratic national party committees. By 1998 the soft-money share had risen to 37 percent. For the three Republican national party committees, the proportion rose from 20 percent to 29 percent during the same six years.

### **The Sources of Soft Money**

Soft money has grown rapidly because both parties have been increasingly successful in soliciting large soft money gifts. Since at least 1988, both parties have had organized programs to recruit large donors. In 1992, for example, the DNC and RNC raised a total of \$63 million in soft money, about 30 percent of which came from contributors of \$100,000 or more.<sup>37</sup> The parties have also been successful in soliciting major contributions from corporations and, primarily in the Democratic Party, labor unions. The parties have thus succeeded in gaining access to contributions from sources and in amounts that were prohibited by the campaign finance reforms of the 1970s.

According to an analysis by the FEC, the parties have raised an increasingly large number of contributions in this manner. During the 1992 election cycle, the national party committees' soft money accounts accepted at least 381 individual contributions in excess of \$20,000 (the annual federal party contribution limit) and about 11,000 contributions from sources that are prohibited from giving in federal elections, particularly corporations and labor unions. By the 1996 election cycle, these figures had more than doubled. The national party committees received nearly 1,000 individual contributions of more than \$20,000 and approximately 27,000 contributions from sources prohibited from giving hard money.<sup>38</sup>

The business community is by far the most important source of soft money, as shown in Table 5 (page 26). According to one independent analysis, businesses provided \$55.9 mil-

lion of the \$102.2 million in soft money received by national party committees during the 1994 election cycle. In 1998, these organizations had donated more than \$105 million of the more than \$200 million received through October. The vast majority of this money came from corporations rather than trade associations or other incorporated organizations. These figures do not, of course, include individual contributions made by members of the business community.

A substantial share of this money came from large contributions. In 1998 at least 218 corporations donated more than \$100,000, compared with 96 that gave this amount in 1994. Sixteen corporations gave \$500,000 or more, whereas only four gave at this level four years earlier.<sup>39</sup>

Further evidence of the role of business contributions in the growth of soft money is found in a 1997 analysis conducted by the *Los Angeles Times*, which found that soft money donations made by the 544 largest public and private U.S. companies had more than tripled between 1992 and 1996, growing from \$16 million to \$51 million. In comparison, the contributions made by PACs maintained by these companies rose only from \$43 million to \$52 million.<sup>40</sup>

The largest soft money donors tend to be companies or industries that are heavily regulated by the federal government or those whose profits can be dramatically affected by government policy. For example, according to the Center for Responsive Politics' analysis of 1996 donors:<sup>41</sup>

Tobacco companies and their executives, who have faced concerted federal efforts to strengthen the regulations governing tobacco sales and advertising, as well as the possibility of congressional action to settle ongoing lawsuits, gave a total of \$6.83 million in 1996, with \$5.77 million donated to the Republicans and \$1.06 million to the Democrats. This group was led by Philip Morris, which donated the most soft money of all contributors in 1996, giving a total of



about \$3 million, \$2.52 million of which went to the Republicans. RJR Nabisco gave a total of \$1.44 million, with \$1.18 million going to the Republicans.

Telecommunications companies, in the midst of deregulation and interested in an array of proposals that will affect the industry, contributed \$6.28 million in soft money, almost equally divided between Democrats (\$3.2 million) and Republicans (\$3.1 million). The leader in this group was the communications giant AT&T, which gave about

\$552,000 to Republicans and \$422,000 to Democrats, for a total of \$974,000; one of its major competitors, MCI Telecommunications, gave \$964,000, with almost two-thirds of that amount, \$607,000 going to the Democrats. NYNEX, one of the regional telephone companies gave \$651,000, \$411,000 of which went to the Republicans.

The oil and gas industry, which is affected by a wide range of federal laws and environmental regulations, gave \$9.13 million in soft money, \$6.59 million of which went to

**TABLE 5****Sources of Soft Money Contributions: 1994 and 1998 Elections**

TYPE OF DONOR	1993-1994		1997-1998	
	Amount Donated (\$ millions)	Percent of Itemized Receipts	Amount Donated (\$ millions)	Percent of Itemized Receipts
Business: Total	55.9	58.7	105.7	60.0
Corporations	(50.1)	(52.6)	(92.2)	(52.3)
Individual Incorporated Entities	(1.0)	(1.0)	(1.1)	(0.6)
Trade Associations	(4.9)	(5.1)	(12.4)	(7.0)
Individuals	20.4	21.4	42.9	24.3
Labor Organizations	4.7	4.9	7.8	4.4
Other Organizations and Groups	2.9	3.1	1.6	0.9
Political Candidate Committees	0.5	0.5	0.6	0.3
Political Parties	10.8	11.3	17.6	10.0
<b>Total Itemized Contributions</b>	<b>95.3</b>	<b>100</b>	<b>176.2</b>	<b>100</b>
Unitemized Contributions	6.9		44.3	
<b>Total Contributions</b>	<b>102.2</b>		<b>220.5</b>	

NOTE: Figures based on unadjusted FEC data as reported by the Campaign Reform Project at <http://206.239.183.87/SoftMoneyReport.htm>, January 28, 1999. The total is higher than that reported in the text because the latter adjusts for transfers between committees.

the Republicans, \$2.54 million to the Democrats. Atlantic Richfield and its executives, the leading donor in this group, gave a total of \$1.25 million, with \$764,000 sent to Republican committees and \$486,000 to Democratic committees.

These examples, which are not atypical, demonstrate how ineffective the party contribution limits established by FECA have become in practice. Instead of relying solely on contributions limited in amount from individuals and PACs, parties now raise funds in amounts subject to no limits, receiving a substantial share of their funding from donors who give hundreds of thousands of dollars in each election cycle.

### **The Effects of Soft Money on the Political System**

The rise of soft money has greatly increased the flow of money in national elections and has turned party fundraising into a frenetic and never ending chase for large contributions. As the range of party activities financed with soft money has increased, party organizations have engaged in more aggressive and directed efforts to raise soft dollars. The parties therefore have sought ever larger amounts from soft money donors and have pursued new sources of soft money contributions, especially among members of the business community.

One of the primary ways parties obtain very large contributions is by providing donors with access to federal elected officials. The most highly publicized and controversial example of the access and privilege afforded soft money donors is the use of the White House during the 1996 election cycle as a venue for dinners and other events with President Clinton. While money was not raised at these events, they were clearly designed to reward past soft money donors and stimulate future contributions. Published reports of these sessions sparked a controversy that raised serious questions as to whether access to the White House was for sale

and fueled public cynicism about the influence enjoyed by wealthy contributors. Further examination of the Democratic Party's public disclosure reports revealed that the Democratic National Committee had deposited at least \$3 million in illegal or questionable contributions into their soft money accounts.

The Democratic Party's 1996 fundraising activities, however, are only one example of the consequences of unrestricted party fundraising. In recent years, both major parties have offered soft money donors access to elected leaders in exchange for contributions. White House officials and congressional leaders have been asked to appear at party soft money fund-raisers, participate in party-sponsored policy briefings, attend weekend retreats with donors, and play a role in other small group meetings. Elected officials have even been recruited by the party committees to solicit soft money donations from potential contributors, especially from their own financial supporters and others with whom they have relationships.

Federal officeholders have thus assisted their parties in raising funds for issue advocacy advertising, voter registration, election day turnout drives, and other activities that directly benefit their own campaigns for office. They have also participated in fundraising efforts directed at donors whose interests are directly influenced by federal policy decisions. Such activities place undue pressure on potential donors. Businesses, in particular, are induced to contribute to keep up with their competitors or ensure their own access to lawmakers.

Given the size and source of most soft money contributions, the public cannot help but believe that these donors enjoy special influence and receive special favors. The suspicion of corruption deepens public cynicism and diminishes public confidence in government. More important, these activities raise the likelihood of actual corruption. Indeed, we believe it is only a matter of time before another major scandal develops within the soft money system.

## ISSUE ADVOCACY

Throughout the 1980s and early 1990s, soft money was considered to be the major “loop-hole” that had to be closed in order to ensure an effective system of regulation. In 1996, it was joined by another innovation in political finance known as “issue advocacy advertising.”

Issue advocacy is the general term used to cover three distinct types of speech: advocacy of policy positions, information about issues, and, most critically, specific information about candidates’ voting records, conduct, and policy views. It is to be distinguished from “express advocacy,” which is speech that directly advocates the election or defeat of a particular candidate. In *Buckley*, the Supreme Court distinguished between information about issues and candidates and the advocacy of election or defeat of candidates, noting that the latter is the particular focus of federal campaign finance regulation.<sup>42</sup> It decided that Congress has the power to regulate only political spending that “expressly advocates the election or defeat of a particular federal candidate.” The court further noted that express advocacy can be identified by the use of certain words in any speech or communication, such as “vote for,” “elect,” “defeat,” or “support.”

Since *Buckley*, courts have had to confront the question of how best to limit the scope of campaign finance regulation in order to protect free speech. In resolving this issue, the courts have sought a “bright-line” standard to distinguish express advocacy from issue advocacy, so that advocates can know what is allowed and potential First Amendment problems can be avoided. Most courts have embraced a narrow test that provides the greatest possible protection to free speech—the “magic words” test that was suggested by the Supreme Court in *Buckley*. According to these rulings, as long as a message or advertisement does not contain the specific words listed in *Buckley* as indicative of express advocacy, it is not express advocacy and is not subject to the

restrictions of FECA. In recent years, the First, Second, and Fourth Circuit Courts of Appeals have all adopted this approach.<sup>43</sup>

The FEC has argued for a broader standard that recognizes the context of a message. In its view, a message or advertisement should be considered express advocacy, and therefore be subject to federal regulation, if it presents an “electioneering message” that is clearly intended to encourage the audience to support or oppose a particular candidate for federal office. This is the general approach that has been adopted in the Ninth Circuit Court of Appeals. In *Furgatch v. FEC*, the Ninth Circuit Court ruled that speech without the “magic words” could amount to express advocacy if, when “read as a whole, and with limited reference to external events,” a message is susceptible to no other reasonable interpretation than as “an exhortation to vote for or against a specific candidate.”<sup>44</sup> The FEC has adopted a similar approach in drafting regulations intended to govern issue advocacy expenditures. But these regulations have been successfully challenged in the First Circuit, where the Court affirmed a District Court ruling that the guidelines were unconstitutional on their face because they moved beyond the “magic words” test established in earlier cases.<sup>45</sup>

## The Rise of Issue Advocacy Spending

The judicial decisions distinguishing express advocacy from issue advocacy have provided individuals, organizations, and party committees with an easy way to circumvent federal campaign finance restraints. By crafting advertisements to avoid the “magic words,” parties and other organizations can engage in communications that are not subject to the provisions of FECA, even when those communications are designed to influence the voting in federal elections. The sponsors of such ads can therefore finance these communications with funds drawn from any source without any limit. They need disclose neither their spending nor the sources of their funding.

During the 1996 election cycle, a wide array of party organizations and other groups seized on the issue advocacy distinction and spent tens of millions of dollars on advertisements carefully designed to avoid the restrictions of federal law. Most of these ads featured specific federal candidates. Issue advocacy advertising thus became the new strategy for election spending, especially for organizations not allowed to make direct contributions in federal campaigns.

Party committees were the biggest issue advocacy spenders because they could then finance advertising that directly benefited their candidates with soft money. Each of the major parties spent tens of millions of dollars on ads designed to support its presidential candidate. Both parties also sponsored issue ads that sought to influence the voting in marginal congressional races.

The parties were not required to count any of the funds used for issue advocacy against federal contribution or spending limits. They were, however, required to disclose these expenditures, since all national party committee financial activity must be reported to the FEC. But, in most instances, the national party committees largely avoided even this requirement. Instead of directly paying for the ads, the national committees transferred large sums to state party committees, which purchased the broadcast time. The national party organizations had to disclose only the amounts transferred to state committees. This tactic allowed the parties to spend a greater share of soft money on issue ads, since they were legally state rather than national party expenditures. It also shifted the responsibility for disclosing specific expenditures to state committees, which made it extremely difficult to trace the money.

Most estimates suggest that the party organizations spent at least \$100 million on issue advertising in 1996. The Democrats spent at least \$34 million in soft money during the presidential primary season on issue ads designed to benefit President Clinton's reelection cam-

paign. The Republicans spent at least \$20 million, including about \$9 million in soft money, on ads designed to help Senator Dole's presidential bid in the months leading up to the Republican national convention and another \$8 million in the general election on ads designed to defend their congressional candidates. In addition, the Democratic Congressional Campaign Committee spent an estimated \$8.4 million on issue ads and the Democratic Senatorial Campaign Committee spent \$10 million. Similarly, the Republican senatorial and congressional committees spent at least \$20 million on ads aired in markets covering key congressional races and five states.<sup>46</sup>

Party organizations were not the only groups to engage in issue advertising in 1996. Issue ads were broadcast in markets across the nation and aired in every key congressional race in the country. At least two dozen organizations sponsored issue ads in 1996. These organizations included labor unions, a coalition of business groups, non-profit and tax-exempt organizations, and an array of organized interest groups. Almost all the commercials broadcast by these organizations featured specific federal candidates, and most were aired in the final six weeks of the general election campaign.

The total amount spent on issue ads during the 1996 election is not known. Because such spending is not subject to disclosure, there is no public record of these expenditures. What is known is based on self-reporting by the organizations or groups involved, and many of the advertisers chose not to reveal the extent of their spending or the sources of their funding.

However, those sums that were reported suggest that many tens of millions of dollars were involved. The most prominent effort was conducted by the AFL-CIO, which announced its intention early in 1996 to spend \$35 million on activities designed to influence congressional elections, including an estimated \$22 million for issue ads. All this advertising was directed at congressional districts held by first-term Republicans or those with open seats.

Other examples include the advertising done by The Coalition, a business group led by the U.S. Chamber of Commerce (\$5 million); the Sierra Club (\$4 million); and Citizens for the Republic Education Fund, a tax-exempt foundation (\$4 million). Millions more are estimated to have been spent by other such groups, quite apart from the millions of dollars spent by the Christian Coalition and National Right to Life Committee on voter education information and pamphlets.<sup>47</sup>

Most observers believe that even more was spent in 1998 on issue advocacy advertising in connection with the congressional elections than in 1996, although no accurate estimate of the amount spent to influence outcomes is available due to lack of disclosure. According to a study by the Annenberg Public Policy Center, 836 issue ads were broadcast in 30 states during the final 60 days before the election, of which an estimated 70 percent were sponsored by the major parties. The study estimated that 77 different organizations engaged in the practice during the 1998 cycle.<sup>48</sup> While not all of these ads were designed to influence the election results, the widespread use of this tactic and lack of information about its funding are a cause for concern.

### **Issue Advocacy and Campaign Finance Reform**

Issue advocacy spending as practiced in the 1996 and 1998 elections highlights the tension between the government's authority to regulate campaign finance and the protection of political speech. This issue is not easily resolved.

The freedom of political speech is a core value of our democracy. Robust political debate is the essence of a system of free and fair elections. An informed electorate requires discussion of issues and information on policy questions and candidates. We therefore agree with the courts that the government's regulatory authority should be narrowly limited when it involves First Amendment rights. Govern-

ment regulation should only be permitted in this area when a compelling interest is at stake.

But we believe that the health of our political system is such an interest. The courts, in their efforts to protect First Amendment liberties, have adopted an approach that precludes necessary and effective restraints on campaign finance. The current guidelines for distinguishing between express advocacy and issue advocacy are so narrowly construed that it is now possible to conduct unrestricted financial activity that is, for all intents and purposes, campaign spending.

Our greatest concern here is that issue advocacy spending is not even subject to full and effective public disclosure. We believe the public has a right to know who is attempting to influence its vote. Currently, organized groups and political committees other than party committees are not required to disclose their expenditures or sources of funding. At best, members of the public only know that they have seen an advertisement sponsored by, for instance, Citizens for Reform, Citizens for a Sound Economy, Coalition for Change, or Women for Tax Reform—all of which engaged in issue advocacy spending in connection with the 1996 election, and none of which is a publicly registered political committee whose sources of funding are known to the public. Such limited information does not provide the knowledge needed by voters to make informed decisions or by officials to effectively carry out the administration of campaign finance laws.

We are also troubled that issue advocacy spending raises the demand for campaign funding and therefore for soft money. The primary reason that national party committees sought soft money contributions so aggressively in 1996 and 1998 is that they needed these funds to finance their issue advertising. The emphasis on issue advertising thus created an almost insatiable demand for funds—whatever amounts the party could raise could be immediately spent on issue ads. This strategy in-



creased the value of soft money and encouraged the parties to expand their efforts to raise it.

Candidates also face greater pressure to raise funds as a result of issue advocacy. Those seeking office, especially those in marginal contests or open seats, must now be prepared to wage a campaign that competes not only with an opponent but also with outside groups and party committees. Candidates must be prepared to respond to questions and accusations promoted by hundreds of thousands of dollars of issue advertising. This not only compels candidates to spend more time and resources raising money, but may cause them to lose effective control of their campaigns.

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## IV.

# Recommendations for Reform

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Reform of the campaign finance system is long overdue. For at least a decade, it has been clear to most observers of American politics that the regulatory system established by Congress in the 1970s is failing to achieve its ends. CED shares this view.

In this chapter we present our recommendations for reform. These recommendations reflect our view that no one or two changes will achieve the diverse, and sometimes competing, objectives of a well-functioning system. We need a comprehensive reform program that honestly acknowledges competing values and provides the necessary trade-offs between them. Our proposals are therefore designed to be taken as a whole. They present a major alternative to the current regulatory approach, one that we believe will significantly improve our campaign finance system.

In framing these proposals, our thinking has been guided by several practical considerations that we believe should govern any efforts to legislate in this area:

(1) A program of reform should be relatively simple and easy to understand. Candidates and voters must be able to understand the rules, and administrators must be able to implement the law efficiently and effectively.

(2) The campaign finance rules should not provide an unfair advantage to any particular party or specific candidates. A feasible and effective regulatory system must ensure fair elections and be capable of obtaining bipartisan support. It must also treat participants in the

process equitably. In particular, it should ensure that corporate entities and labor unions are treated in a comparable manner.

(3) Reforms should not impose unrealistic constraints on campaign funding that will place an undue burden on those who seek to comply with the law. Such burdens will only encourage circumvention of the rules.

(4) Reforms must uphold the liberties protected by the First Amendment. Reforms should not impose a burden on political speech unless there is a compelling interest to do so, in accordance with court rulings. Rather, reforms should be designed to promote citizen participation in the political process as well as robust political debate.

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### BASIC PRINCIPLES FOR REFORM

Our recommendations are also informed by our belief in certain basic principles that should govern a system of campaign finance regulation. The five principles listed below reflect the objectives we regard as most important, which should form the basis for evaluating regulatory reform proposals.

(1) *Regulation should protect free speech and promote an informed citizenry.*

The First Amendment and the principles it embodies guarantee freedom of speech and expression and thus protect the cornerstone of our political system: full and robust political debate. The courts have acknowledged the link

between political finance and the First Amendment in ruling that the financing of political expression is a protected form of political speech under the First Amendment. Campaign finance laws must recognize these constitutional considerations and uphold the principles of free speech. It is especially important to protect and promote the political speech that takes place in election campaigns, the purpose of which is to provide American citizens with the knowledge needed to make informed decisions on Election Day.

*(2) Regulation should protect the political system from corruption or the appearance of corruption.*

The regulations governing campaign finance should promote public confidence in the political process and ensure that the integrity of the electoral system is maintained. It is therefore essential that the system guard against corruption or the appearance of corruption in the financing of political campaigns. A system of political finance that fulfills this objective helps to ensure that elected officials are responsive to broad public interests and the desires of their constituencies.

*(3) Regulation should ensure public accountability.*

A goal of the campaign finance system should be full transparency of the funding of campaigns for public office, supported by the public's right to know. Elections allow citizens to hold candidates and elected officials accountable for their views and actions. If the major participants in political campaigns are to be held accountable, the public must have full and timely information about their campaigns, including information about how they are financed. Any system of campaign finance must therefore ensure full public disclosure of the sources of campaign funding, the activities undertaken with it, and the amounts raised and spent. Disclosure not only provides the electorate with the information it needs but also helps curtail excesses and promote full public scrutiny of financial transactions.

*(4) Regulation should encourage public participation in the political system.*

The strength of a democracy depends upon the political participation of its citizens. Citizens should be encouraged not only to vote but to participate in the process in other ways. Campaign finance rules should not discourage citizens from seeking elective office, associating with others, volunteering their skills and time, or participating in the financing of campaigns. Such participation enhances the legitimacy of the representative process and thereby strengthens popular support for the political system.

*(5) Regulation should promote electoral competition.*

The essence of democracy lies in competitive elections that offer voters a choice of candidates. Competition stimulates public interest in election campaigns, induces greater numbers of citizens to learn about the candidates, gives more meaning to elections, and encourages people to vote. It is an essential element in promoting the vitality and quality of political life. The regulation of campaign funding should therefore promote competitive elections by ensuring that candidates have an opportunity to obtain the resources needed to share their views with voters.

**Recommendation #1:  
ELIMINATE SOFT MONEY**

We believe that, as a general principle, funds used to promote political candidacies should be subject to the requirements and restrictions of federal law on campaign finance. Soft money is the most egregious example of campaign financing that violates this principle. *No reform is more urgently needed than the elimination of soft money.*

Some business leaders have already taken action to help remedy this problem by refusing to participate in the soft money system. Most businesses in America do not give unregulated soft money funds to the political parties. Others, including such industry leaders as General

Motors, AlliedSignal, and Monsanto, have recently declared that they will no longer make such contributions. They have been joined by dozens of corporate executives, who recognize the dangers to our system of government created by this type of fundraising.<sup>49</sup> **CED supports these voluntary efforts to reduce soft money and lauds the leadership shown by these members of the business community. We urge other business leaders, labor unions, and individual citizens to follow this lead and voluntarily work to reduce the supply of soft money funds.**

There are ample opportunities for members of the business community to express their support for candidates or party organizations, either as individuals or through PACs. We encourage participation in the process in these ways. But there is no need for members of the business community, labor unions, or others to supplement these opportunities with soft money contributions. Participation in the soft money practices of the national party committees fuels the demand for soft dollars and spurs the arms race mentality that now characterizes party fundraising at the national level.

Voluntary efforts alone, however, will not solve the soft money problem. Potential donors will still face pressure from elected officials and national party leaders to make soft money contributions. We therefore believe that a legislative remedy is needed to end soft money. **Specifically, we recommend that Congress prohibit national party committees, their officers or staff, and any organizations or entities established or controlled by national party committees or their personnel, from soliciting, receiving, or directing any contributions, donations, or transfers of funds that are not subject to the limitations, prohibitions, and public disclosure requirements of federal law. These committees and individuals should also be prohibited from spending any funds that are not subject to such restrictions and requirements. Similar prohibitions should be applied to federal officeholders, candidates, and their agents**

**or staffs. In addition, federal officeholders or candidates should be prohibited from raising or spending soft money through personal PACs or so-called "leadership PACs."** (An exemption, however, would be made for federal officeholders running for state or local office who are raising monies allowable under the relevant state law—e.g., a U.S. senator running as a candidate in a gubernatorial election.)

In short, national party committees, including the national congressional campaign committees, and federal politicians would not be allowed to raise and spend monies from unrestricted sources in unlimited amounts. We believe that this reform will greatly reduce the unregulated party money that is now flowing through the system.

This reform also would significantly simplify the rules governing party finance. National party committees would be allowed to raise only hard money. National party committees would no longer be able to raise or use corporate or labor union treasury funds or unlimited gifts from individuals and PACs. Their revenues would have to come from limited voluntary contributions from individuals, PACs, or other federally registered political committees, such as candidate campaign committees. There would no longer be a need for separate types of bank accounts or complex allocation rules for the financing of different types of party activity.

Taking national party committees, federal officeholders and candidates, and their agents and staffs out of the business of raising and spending soft money will change the relationship between donors and federal politicians. It will reduce both the incentive for donors to give in exchange for access and the pressure to give that is created by solicitations from national party leaders or elected officeholders. It will also prevent federal candidates from raising unlimited funds that can be used by party committees to benefit indirectly their own bids for office. We believe that this reform will substantially alter the incentive structure that en-

courages soft money contributions. As a result, we expect the vast majority of this pool of funds, especially much of the money donated by the business community, to dry up. Most of this money came into the system only during the last two presidential cycles, largely in response to the aggressive fundraising practices of the national party committees. These donors are unlikely to aggressively seek out other means of pouring money into the system.

We recognize, however, that this recommendation could be circumvented. Federal officeholders and candidates could still engage in soft money fundraising by shifting their activities to the state level. Federal officials could help their respective state parties raise funds that are not subject to federal limits, and the state parties could in turn use these monies to finance activities, such as voter registration and turnout drives, that influence federal elections in their state. Such activities would diminish the benefits of reforms adopted at the national level.

We have carefully considered the proposal to close this “loophole” by extending federal regulation to any state party activities that might influence the outcome of a federal election and are financed by contributions not permitted by federal law. But we are very troubled by the prospect of using federal rules to govern state party political finance, especially when these committees are acting in conformance with the laws adopted by the people of their states. Such an approach raises troublesome issues regarding the principle of federalism and the scope of Congress’s authority to legislate in this area. Accordingly, we conclude that this issue is most appropriately handled by the states. **We therefore urge state legislatures to pass any legislation necessary to ensure that state party committees cannot finance their activities from unrestricted or undisclosed sources of funding.**

We recognize that a ban on soft money will have a significant effect on the resources available to national party committees and may

diminish their role in the electoral process. Soft money represents a substantial share of party revenues and is used to finance many of the costs directly related to the parties’ activities, ranging from staff salaries and overhead expenses to voter registration and mobilization efforts. The loss of soft money is likely to reduce such party activities and would require that parties pay more of their administrative and political services costs from funds they raise under federal limits. This, in turn, may lead to a reduction in the amounts of money available for candidate support or voter turnout efforts. Since parties are the only source of private funding (other than personal contributions or loans) that favors challengers, a significant reduction in party resources is likely to decrease the resources available to challengers. It is also likely to reduce the amounts available for voter identification and turnout programs. We believe that these party activities play a valuable role in enhancing the competitiveness of elections and encouraging citizen participation.

**To partially compensate for this loss, we recommend a change in the rules limiting individual contributions to federal candidates and political committees. Under current law, individuals are limited to an annual total of \$25,000 for all contributions made to federal candidates, PACs, and party committees. We propose that Congress establish two separate aggregate limits for individuals. The first would limit the total amount contributed by an individual to federal candidates and PACs to \$25,000 annually. The second, separate ceiling would limit the total amount contributed by an individual to national party committees to \$25,000 annually. This change will allow parties to raise more regulated money from individuals than is permissible under current federal law.**

## **Recommendation #2: IMPROVE CANDIDATE ACCESS TO RESOURCES**

Reform should ease the burdens of fundraising by making it easier for candidates to



raise the funds needed to communicate effectively with voters and mount competitive campaigns.

Fundraising has become more onerous in part because contribution limits have remained fixed. In the 20 years since FECA was adopted, inflation has reduced the value of a \$1,000 contribution to approximately \$350, and the costs of campaigns have risen much faster than inflation. Consequently, in each successive election, candidates have had to raise a significantly larger number of contributions.

**We recommend that Congress raise the limit on individual contributions to federal candidates from \$1,000 per election to \$3,000 and index this new limit for inflation.**

This change in the individual contribution limits will approximately restore the purchasing power of contributions that has been lost since FECA was adopted. It will encourage candidates to rely more on individuals for campaign funds and allow them to receive more money from their most generous supporters. By significantly increasing the potential pool of money available from individuals, it will therefore enhance the role of the individual donor in the financing of federal campaigns.

**We recognize, however, that a relatively small number of donors are willing or able to give \$3,000 to a federal candidate. In order to ensure that such donors do not gain undue influence as a result of this change, an individual's total contributions to federal candidates and PACs should remain subject to the annual limit of \$25,000 described above.\***

We do not believe that this increase in individual contribution limits materially increases the risk of corruption or the appearance of corruption in the political process. The amount contributed by any one individual under these higher limits will still represent an insignificant share of most candidates' total receipts. Finally, all such donations will continue to be publicly disclosed, which makes this funding easy to trace.

By expanding the amounts individuals may give, our proposal should reduce the incentive

for candidates to seek PAC funding. This increase in the individual contribution limit to \$3,000 will significantly reduce the disparity between it and the maximum allowable PAC contribution of \$5,000. This reform will therefore reduce the relative influence of PACs by increasing the role of individuals. It will make it easier for candidates to eschew PAC contributions, since it will be easier to replace PAC monies with funds raised from individual donors.

We are concerned, however, that this increase in individual limits alone will have only a modest effect on public participation in federal campaign funding, since relatively few individual donors are constrained by the current ceilings. Therefore, to broaden public participation and enhance the role of the small donor in the financing of campaigns, we favor a program of public matching funds for congressional candidates similar to the program that now exists for presidential candidates.

**CED recommends that Congress establish a voluntary program of public funding under which individual contributions to congressional candidates would be eligible for matching subsidies. Candidates who choose to participate would receive two dollars in public money for every dollar received from an individual donor, up to a maximum of \$400 for each individual contribution of \$200. Candidates would qualify by raising a threshold amount of money in small individual donations of \$200 or less. Those who choose to participate in the program would be required to abide by campaign spending limits, as described below. Each participating candidate must also limit any personal contribution to his or her own campaign to \$25,000. The costs of the program would be financed through federal budget appropriations.**

We estimate that the initial cost of this program of public subsidies will be in the range of \$400 million to \$600 million for each two-year election cycle. The two-for-one match is higher than the current dollar-for-dollar match used in presidential primary campaigns. Soliciting

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\*See memorandum by WILLIAM F. HECHT (page 44).

small contributions will be far more cost-effective under a two-for-one match program.

*Under this proposal, total individual contributions plus the matching funds would be sufficient to fully finance congressional campaign spending at current levels. We make no apology for proposing direct public financing of this program. The improvement of our campaign finance system is a public benefit, and it should therefore be publicly funded. It is an investment in the people's business.*

In deciding to recommend this program, we considered other forms of subsidy such as providing free television or radio broadcast time to candidates or reduced-rate postage. But we found these alternatives to be less attractive. Free or reduced-rate broadcast time for candidates and reduced-rate postage are unfunded mandates that would shift the burden of payment onto broadcasters or the U.S. Postal Service. But more important, we believe the benefits of a program of public matching funds far outweigh the advantages of these more limited alternatives:

*First*, the leveraging effect of matching subsidies would encourage individual contributions by small donors and broaden participation in our political system.

*Second*, public subsidies would provide candidates with a strong financial incentive to seek out such small contributions from a large number of donors. In advancing this view, we draw from the experience of the matching fund program in presidential nomination campaigns. The availability of matching funds has induced presidential candidates to raise a substantial portion of their campaign funds through small contributions. As a result, more than a third of the revenues received by most presidential candidates comes from public funding. Those candidates who prove particularly successful at generating small gifts often receive 40 percent or more of their funding from this source.

*Third*, as is also evident from the experience in presidential campaigns, the availability of matching funds, when combined with expenditure limits, reduces the burdens of fundraising. Every dollar received in public

funding is one less dollar a candidate has to solicit.

*Fourth*, public funding diminishes the risk of corruption. Because these funds are not from private sources, they are attached to no particular interest. Because they also encourage candidates to broaden their base of financial support, they help to diminish the influence of large donors. In particular, public funding reduces the relative influence of PACs and may provide candidates with a further incentive to raise contributions from individuals rather than PACs.

Finally, and most important, public funding, along with higher individual contribution limits, will promote competition in federal elections. As we noted in Chapter II, the chief financial impediment to greater competition in federal elections is the lack of money on the part of challengers. Our proposals will improve the resources available to these candidates, most of whom currently do not raise sufficient funds to wage a viable campaign. By making it easier for challengers to raise funds, these reforms will also make it less likely that candidates will be discouraged from running by the burdens of fundraising. This, too, should improve the level of competition, while expanding the choices available to voters.

### **Recommendation #3: REDUCE THE FUNDRAISING “ARMS RACE” WITH CONGRESSIONAL CAMPAIGN SPENDING LIMITS**

Allowing congressional candidates to raise money more easily will not necessarily reduce the emphasis on fundraising in federal campaigns. Candidates might respond to these reforms by simply escalating the open-ended quest for campaign dollars, relying on the higher contribution limits and availability of public funding to raise and spend even larger sums than they do under the current system. After all, it is difficult to legislate political behavior, and competitive pressures feed an “arms race” fundraising mentality. Faced with no clear limit to the amounts that their opponents can

spend, candidates may continue to believe it necessary to raise as much money as possible. The absence of spending limits would therefore undermine the benefits from providing candidates with easier access to funds.

**We therefore recommend that Congress establish a system of voluntary candidate spending ceilings. Candidates who agree to accept public subsidies would be required to abide by these ceilings.**

One advantage of public financing is that it facilitates ceilings on expenditures. The Supreme Court has upheld the constitutionality of spending ceilings for candidates who voluntarily accept public subsidies.

In calling for limits on expenditures, we recognize that ceilings must be generous enough to induce candidate participation, but not so generous that they have little practical effect on campaign expenditures. In our view, these parameters are best fulfilled by limits set at the following levels. **In House elections, a candidate receiving public funds should be allowed to spend up to \$500,000 in a primary and \$500,000 in a general election. An additional \$200,000 would be allowed in the event of a runoff election. These limits would be adjusted for inflation at the beginning of each new election cycle. In Senate elections, a candidate should be allowed to spend a total amount equal to a base of \$1 million plus 50 cents times the voting-age population of the state. An additional amount equal to 20 percent of this limit would be allowed in the event of a runoff election. This ceiling would also be adjusted for inflation. Any costs incurred by a campaign for legal and accounting services, or other costs incurred to comply with the law, would be exempt from these limits.**

These ceilings are set at a higher level than those included in most current legislative proposals. We feel that more generous limits will encourage candidate participation in the public funding program and help to ensure com-

pliance. Such ceilings will permit candidates to communicate effectively with voters, while eliminating the open-ended quest for funding that now characterizes federal campaigns. In the near term, limits set at these levels would not substantially reduce the amounts spent in the majority of congressional campaigns, but they would constrain spending in the most expensive House and Senate contests. For example, in 1998, 101 House candidates spent more than our proposed limit; many of them would have had to restrict their spending under our proposal. Over time, however, ceilings at these levels should substantially reduce spending in federal elections relative to its rapidly increasing trend.

Ceilings should not put candidates at a significant disadvantage vis-a-vis their competitors. Candidates who agree to accept subsidies and adhere to the limits may be challenged by opponents who do not agree to these restrictions. Ceilings on candidate expenditures may also encourage PACs and other organizations to engage in independent expenditure or issue advertising campaigns, which cannot be limited, to support or defeat candidates. **To ensure that candidates who agree to ceilings are not unfairly disadvantaged, the ceilings should be adjusted in these circumstances. Candidates who face opponents who are not bound by spending limits, or who are opposed by independent expenditures, should be allowed to spend additional amounts and receive additional public subsidies equal to the amounts expended against them.**

We realize that limits on spending do not guarantee that candidates will have the resources to compete against a better-funded opponent or well-financed independent spenders. **Party committees therefore should be allowed to assist candidates by providing financial assistance up to the level of the spending limit. Party organizations should be allowed to make coordinated expenditures on behalf of a**

**candidate to supplement a candidate's campaign spending, so long as the combined amount spent by the candidate and the party in a race does not exceed the set limit.<sup>†</sup>**

Finally, spending limits will be effective only if they are adequately monitored and enforced. We are concerned that the FEC is currently underfunded and understaffed. At its present levels of staff and budget authority, the FEC will not be able to efficiently and effectively monitor compliance with spending ceilings, conduct the audits that will be required in a program of congressional campaign finance, or determine violations in a timely and responsible manner. **We therefore urge Congress to review the staffing, structure, and current funding of the FEC and provide it with the resources and authority needed to ensure accurate and timely monitoring and compliance with the law.** The FEC should be able to expand its audit and compliance staff to the extent needed to ensure vigilant monitoring of candidate compliance and timely and efficient audits of the financial activities of candidates receiving public funding and subject to spending limits.

#### **Recommendation #4: REFORM ISSUE ADVOCACY**

As noted in Chapter III, any effort to reform issue advocacy spending in connection with federal elections must strike a regulatory balance between protecting political speech and protecting the integrity of our electoral process. The extent of the regulation to be allowed will ultimately be decided by the courts.

We cannot determine in advance how the courts will eventually decide this issue. We do believe, however, that the current standard used

in the majority of decisions rendered to date, the so-called “magic words” test, is too narrow. Under this standard, campaign finance laws are easily circumvented; the mere avoidance of specific words in the text of a communication allows the sponsoring organization to operate wholly outside the scope of FECA. Their election-directed messages are not subject to federal contribution limits or public disclosure. More restraint is needed, and we prefer a broader standard for defining “express advocacy.”

**We urge Congress to adopt a standard that sets forth clear criteria for identifying public communications that constitute express advocacy, to require that such communications be wholly financed from funds raised under federal contribution limits, and to require that the sources of funding and amounts spent on such communications be publicly disclosed. We suggest that express advocacy include communications that: (1) refer to a clearly identified federal candidate, or feature the image or likeness of a clearly identified federal candidate; (2) occur within 30 days of a primary election and are targeted at the state in which the primary is occurring, or within 60 days of a general election; and (3) would be understood by a reasonable person to be encouraging others to support or oppose that candidate. Communications that meet these criteria would have to be paid for with funds raised under federal contribution limits. In addition, the sources of funding and the amounts expended would be fully disclosed and reported to the FEC.**

In our view, this proposal would strengthen the integrity of our electoral system without overly restricting political speech. It would safeguard the system against corruption by ensuring that unlimited corporate treasury funds, labor union treasury funds, or other monies not permitted in federal elections, as well as undisclosed transactions between unregistered political committees, are not used to influence

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<sup>†</sup>This recommendation would allow party committees, in most instances, to provide greater assistance to federal candidates than that allowed under current law. We recognize that coordinated spending limits are presently being reviewed by the courts. In general, we support the principle of expanded party financing of elections, since it is a means of encouraging more fully funded and competitive elections.

federal elections. It would ensure citizens' rights to know the identity of the speakers who are attempting to influence their votes. And it would make publicly available the information needed for adequate enforcement. Those who wish to sponsor such messages could still communicate their views to the electorate, but they would have to pay for these communications with funds raised from voluntary contributions subject to legal limits.

**We recognize that this proposal may not withstand judicial scrutiny. In that instance, we would support the most comprehensive regime of disclosure permitted by the courts.** We strongly support a regulatory approach that at least ensures disclosure of the amounts spent and the sources of funding for candidate-specific issue ads that occur within a reasonable time period before an election. If necessary, subject to the determination of the courts, this proposal could be further narrowed by limiting the disclosure of sources of funding to the top donors to an issue advocacy group, or by restricting disclosure to candidate-specific

ads broadcast on television or radio within a reasonable time period before an election.

Disclosure has the advantage of being constitutionally permissible. Courts have ruled that disclosure is an essential tool in guarding against political corruption or the appearance of corruption and have upheld disclosure rules for lobbying expenditures as well as campaign finances. While the courts have protected anonymous speech, this exemption to full disclosure has usually applied to specific circumstances. The extent to which the courts might allow required disclosure of issue ads, or even candidate-specific messages, is yet to be determined. But given the severe problems created by the current lack of disclosure in issue advocacy, we believe that requirements for effective disclosure and transparency are urgently needed. Then the public will be better able at least to assess the messages distributed through these communications, and regulators and policymakers will have a better sense of the scope of this activity and its impact on the effectiveness of federal election laws and regulations.

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## CONCLUSION

There is no panacea for the many problems of our campaign finance system. To some degree these problems are an inevitable part of the price we pay for democratic elections. But a program of effective reform can nevertheless improve the vitality of our politics by reducing the emphasis on campaign fundraising and increasing competition in federal contests. It can stem the flow of unregulated money and shift political influence more from organized interests towards a broad base of individual voters. These changes will improve the quality of representation provided by elected officials. They will promote public confidence in elections and encourage more citizens to participate actively in them. Reform can thus enhance the role of individual citizens in our

nation's political life. This is the best way to ensure the integrity of our government.

Reform will not come easily. Major changes in the current system are needed, and such dramatic changes are always difficult to make. This is especially true for a program of reform that candidly balances deeply felt competing values and recognizes and accepts trade-offs between diverse goals. However, we do not believe that the current trends in campaign finance are sustainable. They will eventually be rejected by the public. Reform *will* come. We believe that these recommendations, when taken as a whole, provide the foundation for an effective, broad-based, and competitive system of campaign finance.



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# Endnotes

1. Celinda Lake, "Polls Say Public Has Prescription for Reform," *Roll Call*, March 23, 1998.
2. *Money and Politics: A National Survey of the Public's Views on How Money Impacts Our Political System* (Washington, D.C.: Center for Responsive Politics, April-May 1997), p. 1. This survey was conducted by Princeton Survey Research Associates. Hereafter cited as PSRA.
3. *Buckley Stops Here*, Report of the Twentieth Century Fund Working Group on Campaign Finance Litigation (New York: Twentieth Century Fund, 1998), p. 16.
4. PSRA, p. 2.
5. Ann Scales, "Blacks, Especially in South, Answered the Democrats' Call," *The Boston Globe*, November 5, 1998, page A-34.
6. *Buckley Stops Here*, p. 17.
7. Nancy Benac, "American Trust in Government Improving, But Still Overall Low," Associated Press News Release, March 9, 1998 (Reporting the findings of a survey conducted by the Pew Research Center for the People & the Press).
8. To the greatest extent possible, data in this report reflect the 1998 campaigns and elections and are those reported by the Federal Elections Commission as of February 15, 1999. For most, but not all, campaigns the data reflect campaign reports covering the period through December 31, 1998. These data are preliminary, and in some cases incomplete, and will change as later reports are filed.
9. Herbert E. Alexander, "Financing the 1996 Election," Regina Dougherty, et al., eds., *America at the Polls 1996* (Storrs, Conn.: Roper Center for Public Opinion Research, 1997), p. 142.
10. There are no satisfactory price indices for the composite of goods and services used in campaigns.
11. Herbert E. Alexander and Anthony Corrado, *Financing the 1992 Election* (Armonk, New York: M. E. Sharpe, 1995), p. 21. See also Major Garrett, "Money, Politics and the First Amendment," *Cato Institute Briefing Papers* (Washington, D.C.: Cato Institute, June 19, 1997), p. 2.
12. Data reported in Joseph E. Cantor, Denis Steven Rutkus, and Kevin B. Greely, *Free and Reduced-Rate Television Time for Political Candidates* (Washington, D.C.: Congressional Research Service, July 7, 1997), p. 5.
13. This total did not include party-sponsored "issue ads," which included ads specifically designed to support Clinton and Dole.
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15. Sarah Fritz and Dwight Morris, *Handbook of Campaign Spending: Money in the 1990 Congressional Races* (Washington, D.C.: Congressional Quarterly, 1992), pp. 53-54; Dwight Morris and Murielle E. Gamache, *Handbook of Campaign Spending: Money in the 1992 Congressional Races* (Washington, D.C.: Congressional Quarterly, 1994), pp. 6-10; and Dwight Morris and Murielle E. Gamache, *Gold-Plated Politics: The 1992 Congressional Races* (Washington, D.C.: Congressional Quarterly, 1994), p. 9.
16. See Sara Fritz and Dwight Morris, *Gold-Plated Politics: Running for Congress in the 1990s* (Washington, D.C.: Congressional Quarterly, 1992), pp. 14-26; for 1992, Morris and Gamache, *Gold-Plated Politics: The 1992 Congressional Races*, pp. 18-29.
17. Foreign citizens who are not lawfully admitted for permanent residence in the United States.
18. Anthony Corrado, "The Changing Environment of Presidential Campaign Finance," in William G. Mayer, ed., *In Pursuit of the White House* (Chatham, NJ: Chatham House, 1995), p. 226.
19. See, for example, the statements of former legislators in Martin Schram, *Speaking Freely* (Washington, D.C.: Center for Responsive Politics, 1995), Chapter 3.
20. Phillip M. Stern, *Still the Best Congress Money Can Buy* (Washington, D.C.: Regnery, 1992), p. 119.
21. 1998 data on the size of contributions are from the Federal Election Commission "[cansum98.zip](http://www.fec.gov/finance/ftpsum.htm)" at <http://www.fec.gov/finance/ftpsum.htm>.
22. Based on data reported to the Federal Election Commission as of November 23, 1998.
23. Federal Election Commission, "PAC Activity Increases in 1995-96 Election Cycle," press release, April 22, 1997.
24. Frank J. Sorauf, *Inside Campaign Finance* (New Haven: Yale University Press, 1992), pp. 104-109.
25. For a summary of this literature and the major findings, see John R. Wright, *Interest Groups & Congress: Lobbying, Contributions, and Influence* (Boston: Allyn and Bacon, 1996), pp. 136-149.
26. Jonathan S. Krasno and Donald Philip Green, "Stopping the Buck Here: The Case for Campaign Spending Limits," *The Brookings Review*, Spring 1993, pp. 17-21.
27. Center for Responsive Politics, "Money and Incumbency Win Big on Election Day," press release, November 4, 1998.

28. In this model, challenger spending and party identification explain about 55 percent of the variation in voting results. The graph has been simplified to remove the effect of party identification. Interestingly, inclusion of the incumbent's spending does not add significantly to the explanatory power of the model, apparently because of the interdependence between challenger and incumbent spending in an "arms race" effect.

29. The extraordinary spike to \$54 million (20 percent) in 1994 resulted principally from Republican Michael Huffington's self-financing of more than \$28 million in the California race and the unusual (for an incumbent) self-financing of nearly \$7 million in Wisconsin by Senator Herbert Kohl.

30. Alexander, "Financing the 1996 Election," pp. 143-144, and Makinson, *The Big Picture*, p. 4.

31. 116 S. Ct. 2309 (1996).

32. The data in this paragraph and in the analysis that follows are based on CED computations from data reported to the Federal Election Commission. See Federal Election Commission, "FEC Reports Major Increase in Party Activity for 1995-96," press release, March 19, 1997.

33. Paul S. Herrnson, *Congressional Elections* (Washington, D.C.: Congressional Quarterly, 1995), p. 86.

34. The following review of the origins of soft money is loosely based on the more detailed legal history found in Anthony Corrado, "Party Soft Money," in Anthony Corrado, et al., *Campaign Finance Reform: A Sourcebook* (Washington, D.C.: Brookings Institution, 1997), Chapter 6.

35. Anthony Corrado, "Hard Facts About Soft Money," *Trends in Political Financing and Campaign Reform, Occasional Paper 5* (Los Angeles: Citizens' Research Foundation, 1997), p. 3.

36. Federal Election Commission, "Political Party Fundraising Continues to Climb," press release, January 26, 1999.

37. Anthony Corrado, "Soft Money: To Reform or Not to Reform," Paper presented at the Annual Meeting of the New England Political Science Association, Salem, Mass., April 22, 1994.

38. Federal Election Commission, "Soft Money: Draft Notice of Proposed Rulemaking," Memorandum to the Federal Election Commission from Lawrence M. Noble, Agenda Document 98-10, January 26, 1998, p. 22.

39. Based on data developed by Public Disclosure, Inc., for the Campaign Reform Project. These findings are reported at <http://206.239.183.87/SoftMoneyReport.htm> (January 29, 1999).

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42. 424 U.S. at 42.

43. For a review of the decisions made in this area, see Trevor Potter, "Issue Advocacy and Express Advocacy," in *Campaign Finance Reform: A Sourcebook*, pp. 227-239.

44. *Furgatch v. FEC*, 807 F.2d 857 (9th Cir. 1987), at 864.

45. *Maine Right to Life Committee, Inc. v. FEC*, 914 F.Supp. 8 (D. Me. 1996), *aff'd*, 98 F.3d 1 (1st Cir. 1996).

46. Based on data reported in Anthony Corrado, "Financing the 1996 Elections," in Gerald M. Pomper, ed., *The Election of 1996* (Chatham, NJ: Chatham House, 1997), and Diana Dwyre, "Pushing the Campaign Finance Envelope," Paper delivered at the Annual Meeting of the American Political Science Association, Washington, D.C., August 28-31, 1997.

47. See Annenberg Public Policy Center, *Issue Advocacy Advertising During the 1996 Campaign: A Catalog* (Philadelphia, Penn.: Annenberg Public Policy Center, September 1997), and Eliza Newlin Carney, "Stealth Bombers," *National Journal*, August 16, 1997, p. 1640.

48. The Annenberg Public Policy Center study is available at <http://appcpenn.org/issueads/>.

49. See, among others, Mary Beth Regan and Amy Borrus, "Business Gets Hard-Nosed About Soft Money," *Business Week*, June 23, 1997; David Lightman, "Corporate Executives Jump on Finance Reform Bandwagon," *Hartford Courant*, July 8, 1998; and Jerome Kohlberg, "'Soft Money' is Bad Business," *New York Times*, July 5, 1998.

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# Memoranda of Comment, Reservation, or Dissent

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Page 3, HARRY L. FREEMAN, with which THOMAS J. KLUTZNICK has asked to be associated

No responsible person can in any way object to or quarrel with the report and its recommendations; we all know that campaign contributions—and the cost of campaigns—are incredibly out of line.

Having said that, and with due respect to the drafters, I do not believe this Congress, or even the next one, will enact campaign reform legislation. I have looked at the vote and head counts and just do not see it. We would have to have a major turn of events, and this I admit is possible, to turn the political tide.

We can encourage, and already have encouraged, U.S. companies to voluntarily stop the flow, absolutely, of “soft money.” We tried this around 10 years ago when the average corporate soft money contribution was \$10,000 or \$25,000. Now it has skyrocketed beyond prior belief. CED’s efforts should be concentrated on negotiations and on urging other major business organizations to try to convince all their members to “take the pledge.” Indeed, I think most companies would welcome a way out of this situation. There is no need to drop support for revision of the laws. But I urge CED to take this opportunity to take a path where some degree of success might be obtained and with relatively little time and expense.

The nonconforming companies can make their soft money contributions, but they would be identified through the FEC. I believe the media would pick up those who stray from the practice.

If corporations follow this path, it will be much easier to try to contain organized labor’s contributions, and hopefully the cost of campaigns.

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Page 3, NED REGAN

I am pleased to be associated with this report and I support its recommendations. I have, however, one major qualification.

While our present form of raising money is clearly flawed, its impact on the electoral process and government policy setting is not as pernicious as often portrayed. Consider the following points.

- Paid ads are now a vital source of information on candidates. As every survey shows, and readers and viewers know, serious news media coverage of candidates for public office has decreased. Even in the last presidential election the candidates were rarely given much more than “photo-op” coverage on the six o’clock news. Increasingly candidates have to resort to paid ads to explain their position (or criticize their opponents’).
- Fundraising activities do not detract from meeting voters to discuss issues; in fact, it is somewhat the opposite. Fundraising is not all done through frantic phone calls to lobbyists; money is raised through an endless round of breakfasts, lunches and after-work meetings (albeit with individuals with the ability to write at least a modest check) where the issues are always fiercely discussed. Community gatherings, at one time a staple of urban living, have diminished in suburban settings, so fund raising events have become a major way for candidates to interact with voters.
- Incumbents raise a disproportionate share of campaign funds, but this is not a new phenomenon. Incumbents are powerful and have always raised the most money and garnered the most support from interest groups.

- There are numerous impediments associated with seeking public office, and raising large amounts of money is certainly one. But the major reason potential candidates do not come forward is because of the intense media scrutiny their personal lives would receive.

Finally, we appear to be getting fairly good government these days. It is centerist and pragmatic at the federal level, with fiscal and social problems that have bedeviled the country for decades now resolved. And state governors and city mayors are widely praised for their progressive and fiscally sound policies. In spite of the malevolence attributed to our campaign finance process, government seems to work quite well.

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Pages 4 and 36, WILLIAM F. HECHT

In addition to adjusting the limit on *individual* contributions for inflation, it is appropriate to inflation-adjust the limits of *PAC* contributions. This would restore the purchasing power of contributions, which has been lost since Federal Election Campaign Act (FECA) was adopted 25 years ago. As noted on p. 15, PACs “collectively represent thousands of different interests and tens of thousands of individual contributors. All PAC monies contributed to candidates must come from voluntary donations; a committee can request, but not require, such donations from the members of a corporation or group with which it is associated. PACs thus provide small donors with a means of participating in the financing of campaigns through a broader group that represents their concerns. In this way, they have increased public participation in the financing of elections and offered individuals a valuable means of exercising their rights of free speech and political association.”

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